

SAINT VINCENT AND THE GRENADINES

COPYRIGHT ACT, 2003

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SAINT VINCENT AND THE GRENADINES

ACT NO. 21 of 2003

I ASSENT

DR.FREDERICK BALLENTYNE

Governor-General
6th November, 2003

[L.S.]

AN ACT to make a comprehensive copyright law for Saint Vincent and the Grenadines, to afford better protection for literary, dramatic, musical, artistic and other works and creative products, to provide for the right of performers and others in performances and to repeal the Copyright Act Cap. 262 and provide for matters connected therewith or incidental hereto.

[By Proclamation]

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same as follows:

PART 1

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Copyright Act 2003.

(2) This Act shall come into force on a day to be appointed by the Governor General by order published in the Gazette, and different days may be appointed for different provisions and different purposes.

Interpretation

2. (1) In this Act-

“adaptation” includes:

(a) in relation to computer programme, a

version of the programme in which it is converted into or out of a computer language or code, or into a different language or code otherwise than incidentally in the course of running the programme;

- (b) in relation to a literary work in a non-dramatic form, a version of the work, whether in its original language or in a different language, in a document form;
- (c) in relation to a literary work in a dramatic form, a version of the work whether in its original language, or different language, in a non-dramatic form;
- (d) in relation to a literary work, whether in a non-dramatic form or in a dramatic form,
 - (i) a translation of the work;
 - (ii) a version of the work in which the story or action is conveyed solely or principally by means of pictures in a form suitable for reproduction in a book or a newspaper, a magazine or similar periodical; and
- (e) in relation to a musical work; an arrangement or transcription of the work;

“article” in the context of an article in a periodical, includes an item of any description;

“artistic work” means,

- (a) a graphic work, photograph, sculpture or collage, whether the work is of artistic quality or not;
- (b) a building or model of a building, irrespective of artistic quality; or

- (c) a work of artistic craftsmanship to which neither paragraph (a) nor paragraph (b) applies;

“author” means the person who creates a work, being

- (a) in relation to a literary or dramatic work, the author of the work;
- (b) in relation to musical work, the composer;
- (c) in relation to an artistic work other than a photograph, the artist;
- (d) in relation to a photograph, the person taking the photograph;
- (e) in relation to a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken;
- (f) in relation to the typographical arrangement of a published edition, the publisher;
- (g) in relation to a broadcast, the person making the broadcast as described in section 4 (2) or, in the case of a broadcast which relays another broadcast by reception and immediate retransmission, the person making that other broadcast;
- (h) in relation to a cable programme, the person providing the cable programme service in which the programme is included;
- (i) in relation to a computer-generated literary, dramatic, musical or artistic work, the person by whom the arrangements necessary for the creation of the work are undertaken;

“broadcasting” means a transmission of wireless telegraphy of visual images, sounds or other information which,

- (a) having regard to section 4 is capable of being lawfully received by members of the public or;
- (b) is transmitted for presentation to members of the public;

“to broadcast” means to transmit by the emission of electromagnetic energy otherwise than over a path that is provided by a material substance, visual images or sounds, or other information, irrespective of the form in which the sounds, images or information are represented for reception by the public notwithstanding that;

- (a) subsequent to the initial transmission, but before reception by the public, the images or sounds may be carried on a path provided by a material substance;
- (b) the public receiving or capable of receiving the images or sounds is in a country other than that from which the original transmission took place; or
- (c) no member of the public actually received the images or sounds, provided only that members of the public could, if in possession of suitable apparatus, receive them,

and “broadcasting” and “re-broadcasting” shall have corresponding meaning;

“building” includes a fixed structure of any kind and a part of a building or fixed structure;

“business” includes a trade or profession;

“cable programme service” means any item included in a cable programme service, and any reference in this Act

- (a) to the inclusion of a cable programme or work in a cable programme service is a reference to its transmission as part of the service; and
- (b) to the person included in it is a reference to the person providing the service;

“Comptroller” means the Comptroller of Customs and Excise;

“collective works” means,

- (a) a work of joint authorship; or
- (b) a work in which there are distinct contributions by different authors or in which works or parts of works of different authors are incorporated;

“computer generated work” means a work generated by a computer in circumstances such that the work has no human author;

“computer programme” means a set of instructions whether expressed in words or in a dramatic or other form, which is capable when incorporated in a machine readable medium, of causing an electronic or other device having information process capabilities to indicate, perform or to achieve a particular function, task or result;

“communication to the public” means the transmission by wire or wireless means of the images or sounds, or both, of a work, a performance or a sound recording in such a way that the images or sounds can be perceived by person outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that, without the transmission, the images or sounds would not be perceivable and further, irrespective of whether the person can receive the images or sounds at the same place and time, or different places or times;

“copy” includes:

- (a) in relation to a work that is literary, dramatic, musical or artistic work, a reproduction of the work in any material form; or
- (b) in respect of an artistic work, a reproduction in three-dimensions, if the artistic work is a two dimensional work and a reproduction in two dimensions if the artistic work is a three dimensional work; or
- (c) in respect of a literary, dramatic or musical work includes a reproduction in the form of a record or film;
- (d) in relation to a work that is a film, television broadcast, or cable programme includes a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme;
- (e) in relation to a work that is a typographical arrangement of a published edition, a facsimile copy of the arrangement; and

- (f) any category however made and in whatever medium, that is transient or is incidental to some other use of the work

and references to the “copying of a work of any description” shall be construed to include a reference to storing the work in any medium by electronic means;

“copyright” means copyright subsisting under Part II of this Act;

“Court” means High Court;

“country” includes any territory;

“distribution” means the distribution to the public, for commercial purposes, of copies of work by way of rental, lease, hire, loan or similar arrangement and distributing has a corresponding meaning;

“dramatic work” includes:

- (a) a choreographic show or entertainment in dumb show; and
- (b) a scenario or script for a film but does not include a film as distinct from the scenario or script;

“drawing” includes a diagram, map, chart or plan;

“educational institution” means any school, college or other educational body designated by the Minister by order either specifically or by reference to a class, for the purposes of this Act;

“engraving” includes an etching, lithograph, product of photogravure, woodcut, print or similar work, not being a photograph;

“exclusive licence” means a licence in writing signed by or on behalf of the owner of copyright in a work authorizing the licensee, to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the owner of the copyright;

“exclusive recording contract” means a contract between a performer and another person under which that person is entitled, to the exclusion of all other persons, including the performer, to make recordings of one or more of his performances with a view to their being shown or played in public, sold, let for hire, or otherwise commercially exploited;

“film” means a recording of any medium from which a moving image may by any means be produced;

“future copyright” includes:

- (a) copyright which will or may come into existence in respect of any future work or class of works or on the occurrence of a future event;
- (b) in relation to such copyright a person prospectively entitled thereto by virtue of such an arrangement as stated in section 21;

“graphic work” includes:

- (a) any painting, drawing, diagram, map, chart, or plan; and
- (b) any engraving, etching, lithograph, woodcut or similar work;

“illicit recording” means:

- (a) for the purposes of a performer's rights, a recording of the whole or a substantial part of a performance of his if it is made otherwise than for private purpose, without his consent;
- (b) for the purposes of the rights of a person having recording rights under an exclusive recording contract, a recording of the whole or any substantial part of a performance subject to the exclusive recording contract, if it is made otherwise than for private purposes, without his consent or that of the performer;
- (c) the purposes of any offence under this Act, a recording which is an illicit recording by virtue of either paragraphs (a) or (b) of this definition;

“infringing copy” in relation to a protected work means,

- (a) any copy of the work, the making of which is not authorized under or by virtue of any provisions of this Act;
- (b) any copy of the work that is or is proposed to be imported into Saint Vincent and the Grenadines and its making in Saint Vincent and the Grenadines would have constituted an infringement of the copyright in the work of a breach of an exclusive agreement relating to that work;

“literary work” means,

- (a) any work, other than a dramatic or musical work, which is written, spoken or sung;
- (b) a written table or compilation;

(c) a computer programme;

“manuscript” in relation to a work, means the original document embodying the work whether written by hand or not;

“Minister” means the Minister responsible for copyright;

“musical work” means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music;

“owner of rights” means a legal or natural person who owns the rights to a work;

“performer” means any actor, singer, musician, dancer or other person who acts, sings, depicts, delivers, declaims, plays in or otherwise performs a literary, dramatic, musical or artistic work; and references to the performer in the context of the person having performer’s rights, shall be construed to include references to the person who, pursuant to any provision of this Act, is for the time being entitled to exercise those rights;

“performance” in relation to

(a) copyright in a protected work includes:

(i) delivery in the case of lectures, addresses, speeches and sermons;

(ii) any mode of visual acoustic presentation including presentation by means of a sound recording, film, broadcast or cable programme of the work;

(b) the rights conferred under Part IX means,

- (i) a dramatic performance which includes dance and mime;
- (ii) a musical performance; or
- (iii) a reading or recitation of a literary work, which is, or to the extent that it is, a live programme given by one or more individuals;

“person having recording rights” in relation to a performance means a person who being a qualified person,

- (a) is either a party to or has the benefit of an exclusive recording contract to which the performance is a subject or is a person to whom the benefit of such a contract has been assigned; or
- (b) is licenced to make recordings of the performance with a view to them being sold or let for hire or shown or played in public, by a person who is within the definition in paragraph (a) but is not a qualified person;

“photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;

“place of public entertainment” includes any premises which are from time to time made available for hire to such persons as may desire to hire them for purposes of public entertainment, and the premises that are occupied mainly for other purposes;

“prospective owner” has the meaning assigned to it in the definition of “future copyright”;

“protected work” is work of any category in which copyright subsists by virtue of this Act;

“published edition” in relation to copyright in the typographical arrangement of a published edition, means the published edition of the whole or any part of one or more literary, dramatic, musical or artistic works;

“qualified person”

- (a) in the case of an individual, means a person who is a citizen of Saint Vincent and the Grenadines, or who is domiciled or resident in Saint Vincent and the Grenadines;
- (b) in the case of a body corporate, means a body incorporated or established under the Companies Act;

“qualifying performance” means a performance that

- (a) is given by an individual who is a qualified person; or
- (b) takes place in Saint Vincent and the Grenadines; or a specified country;

“record” means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom irrespective of the form in which the sounds are represented, other than a sound track associated with a film, but includes in relation to a performance, a film incorporating the performance;

“recording” in relation to a performance means a film or sound recording

- (a) made directly from the live performance;
- (b) made from a broadcast of, or cable programme including, the performance; or
- (c) made directly or indirectly from another recording of the performance;

“rental” means any arrangement under which a copy of a work is made available;

- (a) for payment in money or money’s worth; or
- (b) in the course of a business, as part of services or amenities for which payment is made,

on terms that it will or may be returned;

“reprographic process” includes:

- (a) a process for making facsimile copies;
- (b) a process involving the use of an appliance for making multiple copies, or
- (c) in relation to a work held in electronic form; any copying by electronic means of the work, except for the making of a film or sound recording;

“sculpture” includes a cast or model made for purposes of sculpture;

“sound recording” means:

- (a) a recording of sounds from which the sounds may be reproduced; or
- (b) a recording of the whole or any part of a literary, dramatic or musical work from which sounds reproducing the work or part thereof may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced or the form in which the sounds are represented;

“specified country” means a country specified by the Minister by order;

“telecommunications system” means a system for conveying visual images, sounds or other information by electronic means;

“typeface” includes an ornamental motif used in printing;

“unauthorised” when used to describe any act done in relation to a work, means:

- (a) if copyright subsists in the work, an act done otherwise than by or with the licence of the owner of the copyright;
- (b) if copyright does not subsist in the work; an act done otherwise than by or with the licence of the author or person lawfully claiming under him;

“wireless telegraphy” means the emitting or receiving otherwise than over a path that is provided by a material substance of electro-magnetic energy transmitting visual images or sounds or both visual images or sounds;

“work” means,

- (a) a literary, dramatic, musical or artistic work;
- (b) a sound recording, film, broadcast or cable programme;
- (c) the typographical arrangement of a published edition;

“work of joint authorship” means a work

produced by the collaboration of two or more authors in which the contribution of each author is not separate from the contribution of the other author or authors;

“writing” includes any form of notation, whether by hand or by printing, typewriting or by any other process.

(2) References in this Act to the time at which, or the period during which, a literary, dramatic or musical work was made are references to the time or period at or during which it was first written down, recorded or expressed in some other material form.

Publication

3. (1) For the purposes of this section, “publication in relation to work” means,

- (a) the issue of copies to the public and related expression shall be construed accordingly;
- (b) in the case of a literary, dramatic, musical or artistic work, making it available to the public by means of an electronic retrieval system;

(2) In the case of a work or architecture in the form of a building, or an artistic work incorporated in a building, completed construction of the building shall be treated as equivalent to publication of the work.

(3) The following do not constitute publication for the purposes of this Act

- (a) in the case of a literary, dramatic or musical work,
 - (i) the performance of the work;
 - (ii) the broadcasting of the work or its inclusion in a cable programme service; otherwise than for the purposes of an electronic retrieval system;
- (b) in the case of an artistic work,

- (i) the exhibition of the work; or
 - (ii) the issue to the public of copies of photographs of a work of architecture in the form of building, or a model, a sculpture or a work of artistic craftsmanship; or
 - (iii) the issue to the public of copies of a film including the work; or
 - (iv) the broadcasting of the work or its inclusion in a cable programme service; otherwise than for the purposes of an electronic retrieval system;
- (c) in the case of a sound recording or film;
- (i) the work being played or shown in public; or
 - (ii) the broadcasting of the work or its inclusion in a cable programme service.

(4) A publication that is merely colourable that does not constitute an infringement of copyright or constitute an offence under this Act shall be disregarded for the purposes of this Act.

(5) For the purposes of this Act, a publication outside of Saint Vincent and the Grenadines shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

- (6) In determining for the purposes of this Act
- (a) whether a work has been published,
 - (b) whether a publication of a work was the first publication of work; or
 - (c) whether a work was published or otherwise dealt with in the lifetime of a

person;

any unauthorised publication or the doing of any other unauthorised act shall be disregarded.

(7) A publication or other act shall for the purposes of subsection (6) be taken to have been unauthorised if,

- (a) copyright subsisted in the work and the act concerned was done otherwise than by, or with the licence of the owner of the copyright; or
- (b) copyright did not subsist in the work and the act concerned was done otherwise than by, or with the licence of
 - (i) the author; or
 - (ii) persons lawfully claiming under the author.

(8) Nothing in either subsection (6) or subsection (7) affects any provisions of this Act relating to the acts conferred in copyright or to the acts constituting infringements of copyright or offences under this Act.

**Lawful
reception of
encrypted
broadcasts**

4. (1) In relation to the broadcast of a work, an encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been lawfully made available to members of the public by or with the authority of the person making the transmission or the persons providing the contents of the transmission.

(2) References in this Act to the person making a broadcast, broadcasting a work or including a work in a broadcast are references,

- (a) to the person transmitting the programme, to the extent that he has responsibility for its contents; and
- (b) to any person providing the programme who makes with the person transmitting it, the arrangements necessary for receiving

its transmission,

and references in this Act to a programme, in the context of broadcasting, are to any item included in a broadcast.

PART II – COPYRIGHT

Protected Work

Categories of protected works

5. (1) Subject to this section, the categories of works in which copyright under this Act may subsist are:

- (a) original literary, dramatic, musical or artistic works;
- (b) sound recordings, films, broadcasts or cable programmes;
- (c) typographical arrangements of published editions.

(2) A literary, dramatic or musical work shall not be eligible for copyright protection unless it is written down, recorded or otherwise fixed in a material form; and the storage of the work in a computer shall be regarded as a recording of the work in a material form.

(3) For the purposes of subsection (2), it is immaterial whether the work is recorded by or with the permission of the author; and where it is not recorded by the author, nothing in that subsection shall affect the question whether copyright subsists in the record of the work as distinct from the work recorded.

Qualification for copyright protection

6. (1) A literary, dramatic, musical or artistic work, or, subject to subsection (2) a typographical arrangement of a published edition, qualifies for copyright protection where,

- (a) the author thereof was a qualified person at the time at which the work was made or, if the making of the work extended over a period of time and the author was a qualified person for a substantial part of that period; or
- (b) in the case of a published work

(i) where having regard to section 3, the first publication took place in Saint Vincent and the Grenadines or in a specified country;

(ii) the author was a qualified person at the time at which the work was first published;

(iii) where the author had died before publication but was a qualified person immediately before his death; or

(c) in the case of an artistic work which is a building or incorporated in a building, if the building is erected in Saint Vincent and the Grenadines or in a specified country.

(2) Copyright shall not subsist in the typographical arrangement of a published edition, or to the extent that it reproduces the typographical arrangement of a previous edition.

(3) A sound recording or film qualifies for copyright protection if;

(a) the maker of the recording or film was a qualified person for the whole or substantial part of the period during which the sound recording or film was made; or

(b) having regard to section 3, if the sound recording or film has been published and the first publication took place in Saint Vincent and the Grenadines or in a specified country.

(4) Copyright does not subsist in a sound recording or film which is, or to the extent that it is, a copy taken from a previous sound recording or film.

(5) A broadcast qualifies for copyright protection if it is made in Saint Vincent and the Grenadines or in a specified country by a transmitting station in respect of which there is a valid licence granted under the Telecommunications Act.

(6) Copyright does not subsist in a broadcast which infringes or to the extent that it infringes the copyright in another broadcast or programme.

(7) A cable programme qualifies for copyright protection if it is sent from a place in Saint Vincent and the Grenadines or in a specified country, in accordance with any law in force regulating transmission by cable.

(8) Subject to subsection (7) copyright shall not subsist in any cable programme

- (a) if it is included in a cable programme service by reception and immediate re-transmission of a broadcast or;
- (b) if it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

(9) In relation to a work of joint ownership the references in subsection (1) to author shall be construed as references to any one of the authors.

(10) If the qualification requirements of this section are once satisfied in respect of a work, copyright does not cease to exist by reason of any subsequent event.

(11) The provisions of this Act shall also apply to works that are eligible for protection in Saint Vincent and the Grenadines by virtue of and in accordance with any international convention or other international agreement to which Saint Vincent and the Grenadines is party.

**Nature of
copyright
economic rights**

7. (1) Subject to the provisions of this Act, the owner of Copyright shall have the exclusive right to do, authorise, or prohibit the following acts in relation to the work:

- (a) reproduction of the work;
- (b) translation of the work;
- (c) adaptation, arrangement or other transformation of the work;

- (d) the first public distribution of the original and each copy of the work by sale, rental, or otherwise;
- (e) rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer programme, a data base or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;
- (f) importation of copies of the work, even where the imported copies were made with the authorisation of the owner of copyright;
- (g) public display of the original or a copy of the work;
- (h) public performance of the work;
- (i) broadcasting of the work;
- (j) communication to the public of the work.

(2) The rights of rental and lending under paragraph (e) of subsection (1) shall not apply

- (a) to rental or lending of computer programmes where the programme itself is not the essential object of the rental or lending; or
- (b) to cinematographic works unless such commercial rental has led to widespread copying of such works materially impairing the exclusive right of production.

(3) The onus of proving that widespread copying of a cinematographic work has materially impaired the exclusive right of production under this section rests upon the person who alleges that this is the case.

Duration to Copyright Protection

**Duration of
copyright in
literary,
works,etc.**

8. (1) Subject to the provisions of this section, copyright in any literary, dramatic, musical or artistic work expires at the end of the period of seventy five years from the end of the calendar year in which the author dies.

(2) Where the authorship of a work referred to in subsection (1) is unknown, copyright in that work expires at the end of the period of fifty years from the end of the calendar year in which it was first made available to the public, and subsection (1) shall not apply if the identity of the author becomes known after the end of that period.

(3) For the purposes of subsection (2), acts that constitute the making available of a work to the public include:

- (a) in relation to a literary, dramatic or musical work, the performance of the work in public or its broadcast or inclusion in a cable programme service;
- (b) in relation to an artistic work, the exhibition of the work in public or its inclusion in a film shown to the public or in a broadcast or cable programme service,

so, however, that in determining for the purpose of this subsection whether a work has been made available to the public any unauthorized act shall be disregarded.

(4) The provisions of subsections (1) and (2) shall not apply to computer-generated work, the copyright in which expires at the end of the period of fifty years from the end of the calendar year in which the work is made.

(5) In relation to a work of joint authorship,

- (a) the reference in subsection (1) to the death of the author shall be construed
 - (i) where the identity of all the authors is known, as a reference to the death of the last of them to die;

(ii) where the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last of the authors whose identity is known; and

(b) the reference in subsection (2) to the identity of the author becoming known, shall be construed as a reference to the identity of any of them becoming known.

(6) A work is of unknown authorship if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.

(7) The identity of an author shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry, but if his identity is once known it shall not subsequently be regarded as unknown.

**Duration of
copyright in
sound
recordings and
films**

9. (1) Copyright in a sound recording or film expires at the end of the period of fifty years from the end of the calendar year in which it was made or, where it is made available to the public before the end of that period, seventy five years from the end of the calendar year in which it is so made available.

(2) For the purposes of subsection (1) a sound recording or film is made available to the public when

(a) it is first published, broadcasted or included in a cable programme service;

(b) in the case of a film or film sound track, the film is first shown in public.

(3) In determining whether a sound recording or film has been made available to the public, any unauthorised act shall be disregarded.

**Duration of
copyright in
broadcasts and
cable
programmes**

10. (1) Copyright in a broadcast or cable programme expires at the end of the period of fifty years from the end of the calendar year in which the broadcast was made or the programme included in a cable programme service.

(2) Copyright in a repeat broadcast or a repeat cable

programme expires at the same time as copyright in the original broadcast or cable programme;

(3) No copyright arises in respect of a repeat broadcast or a repeat cable programme which is broadcast or, as the case may be, included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.

(4) References in subsection (2) to a repeat broadcast or a repeat programme means one that is a repeat of a broadcast previously made or as the case may be, of a cable programme previously included in a cable programme service.

Duration of copyright in typographical arrangements of editions

11. Copyright in the typographical arrangement of a published edition expires at the end of period of twenty-five years from the end of the calendar year in which the edition was first published.

PART III – MORAL RIGHTS AND RELATED RIGHTS

Moral rights

12. (1) By virtue of and subject to the provisions of this Act

- (a) the author of a literary, dramatic, musical or artistic work that is protected work; or
- (b) the director of a film that is a protected work,

shall have in respect of such work, the rights specified in sections 13 and 14.

Right to be identified as author

13. (1) Subject to the provisions of this Part, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work shall have, respectively, the right to be identified as the author or, as the case may be, director of the work in the circumstances specified in this section.

(2) The author of a literary work other than words intended to be sung or spoken with music, or a dramatic work has the right to be identified as such whenever

- (a) the work or an adaptation of it is published commercially, performed in public, broadcast or included in a cable

programme service;

- (b) copies of a film or sound recording including the work or an adaptation of it are issued to the public.

(3) The author of a musical work or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified as the author whenever

- (a) the work or an adaptation of it is published commercially;
- (b) copies of a sound recording of the work or an adaptation of it are issued to the public; or
- (c) a film, the sound-track of which includes the work, is shown in public or copies of the film are issued to the public.

(4) The author of an artistic work has the right to be identified as such whenever

- (a) the work is published commercially or exhibited in public or a visual image of it is broadcast or included in a cable programme service;
- (b) a film including a visual image of the work is shown in public or copies of the film are issued to the public; or
- (c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture of a work of artistic craftsmanship, copies of a graphic work representing it or of a photograph of it, are issued to the public.

(5) In addition to the right specified in paragraph (c) of subsection (4), the author of a work of architecture in the form of a building has the right to be identified on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed.

(6) The director of a film has the right to be identified

as director whenever the film is shown in public, broadcast or included in a cable programme service or copies of the film are issued to the public.

(7) The right of an author or director under this section is

- (a) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy;
- (b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building; and
- (c) in any other case, to be identified in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, exhibition, film, broadcast or cable programme in question,

and the identification must, in each case, be clear and reasonably prominent.

(8) For the purposes of this section, any reasonable form of identification may be used.

(9) Except as may be provided by contract, the right conferred by this section shall not apply in relation to

- (a) a computer programme, the design of a typeface or a computer-generated work;
- (b) any work made for the purpose of reporting current events;
- (c) the publication in a newspaper, magazine or similar periodical or in an encyclopaedia, dictionary, yearbook or other collective work of reference, of a

literary, dramatic, musical or artistic work made for the purposes of the publication or made available with the consent of the author for purposes of the publication;

- (d) a work in which copyright originally vested in an international organisation by virtue of section 144 unless the author or director has previously been identified as such in or on published copies of the work.

Right to object to derogatory treatment of work

14. (1) For the purposes of this section; “treatment of a work” means any addition to, deletion from, alteration to or adaptation of the work other than

- (i) a translation of a literary or dramatic work; or
- (ii) an arrangement or transcription of a musical work involving no more than a change of key or register.

(2) The treatment of a work is derogatory if it amounts to distortion or multiplication of the work or is otherwise prejudicial to the honour or reputation of the author or director, and references to a derogatory treatment of a work shall be construed accordingly.

(3) Subject to the provisions of this part the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work have, respectively, the right not to have the work or any part of it subjected to derogatory treatment, and the right is infringed by any person who does any of the acts specified in Section 36 of this Act.

False attribution of work

15. (1) For the purposes of this section “attribution” in relation to work means a statement whether expressed or implied, as to the identity of the author or director.

- (2) A person has the right
 - (a) not to have a literary, dramatic, musical or artistic work falsely attributed to him as author; and
 - (b) not to have a film falsely attributed to him

as director.

(3) The right conferred by subsection (1) is infringed in the circumstances specified in section 38.

**Right to
privacy
commissioned
photographs
and films**

16. Subject to section 38, a person who for private and domestic purposes commissions the taking of a photograph or the making of a film shall have, where the resulting work is a protected work, the right not to have;

- (a) copies of the work issued to the public;
- (b) the work exhibited or shown in public; or
- (c) the work broadcast or included in a cable programme service.

**Duration of
moral rights
and related
rights**

17. (1) The rights conferred by sections 13, 14 and 16 shall subsist so long as copyright subsist in the work.

(2) The right conferred by section 15 shall subsist until the end of the period of twenty years from the end of the calendar year in which the person dies.

**Consent and
waiver of rights**

18. (1) A person having a right conferred under this Part may consent to the doing of any act affecting the right or may waive the right.

(2) A right to which subsection (1) refers may be waived by instrument in writing signed by the person giving up the right and the waiver,

- (a) may relate to works generally or to a specific work or class of works and may relate to existing or future works; and
- (b) may be conditional or unconditional and may be expressed to be subject to revocation.

(3) Where a waiver is made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it shall unless a contrary intention is expressed, be presumed to extend to his licensees and successors in title.

(4) Nothing in this Part shall be construed as

excluding the operation of the general law of contract or estoppel in relation to an informed waiver or other transaction in relation to any of the rights to which this Part relates.

Application of provisions to joint works

19. (1) A film is “jointly directed” if it is made by the collaboration of two or more directors and the contribution of each director is not distinct from that of the other director.

(2) The right conferred by section 13 is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author.

(3) The right conferred by section 14 is, in the case of a work or joint authorship, a right of each joint author and his right is satisfied if he consents to the treatment in question.

(4) A waiver of rights under section 18 by one joint author does not affect the rights of the other joint authors.

(5) Subsections (1), (2) and (3) also apply, with such modifications as are necessary, in relation to a film which was, or is alleged to have been, jointly directed as they apply to a work which is, or is alleged to be, a work of joint authorship.

(6) The right conferred by section 16 is, in the case of a work made in pursuance of a joint commission, a right of each person who commissioned the making of the work, so that

- (a) the right of each is satisfied if he consents to the act in question; and
- (b) a waiver under section 18 by one of them does not affect the rights in the others.

Application of provisions to part of work

20. The rights conferred by

- (a) sections 13 and 16 apply in relation to the whole or any substantial part of a work; and
- (b) sections 14 and 15 apply in relation to the whole or any part of a work.

PART IV – OWNERSHIP AND ASSIGNMENT OF RIGHTS

Ownership of Copyright

Ownership of copyright

21. (1) Subject to this Act the author of a protected work is the first owner of any copyright in that work unless there is an agreement to the contrary.

(2) Subsection (1) shall not apply to copyright subsisting in a work pursuant to section 41.

(3) Where a protected work is a work of joint authorship the authors of the work shall be co-owners of the copyright in that work.

(4) Where a protected work has been made by or under the direction or control of the Government and, apart from this subsection, no copyright would subsist in the work, then copyright shall subsist therein by virtue of this subsection and shall belong to the Crown.

(5) The copyright subsisting in a protected work which has, with the author's written consent been first published in Saint Vincent and the Grenadines by or under the direction or control of the Government shall initially belong to the Crown.

(6) Subsection (5) shall have effect subject to any agreement whereby it is agreed that the copyright in the work shall vest in the author or in some other person designated in the agreement.

(7) For the purposes of this section the term "agreement" includes any conditions regulating or applying to the employment of a person in the service of the Crown.

Assignment and licences

22. (1) Subject to this section, copyright in a work may be transferred by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) A transfer pursuant to this section by way of assignment shall not be effective unless it is in writing and signed by or on behalf of the assignor.

(3) An assignment or other transfer of copyright may be partial, so as to apply

- (a) to one or more, but not all, of the things the owner of the copyright has the exclusive right to do; or

(b) to part, but not the whole, of the period for which copyright is to subsist.

(4) A licence granted by the owner of copyright in a work shall be binding on every successor in title to his interest in copyright, except a purchaser in good faith for valuable consideration and without actual or constructive notice of the licence or a person deriving title from the purchaser.

(5) References in this Act to doing anything with or without the licence of the owner of the copyright shall be construed accordingly.

Prospective ownership of copyright

23. (1) Where, by an agreement made in relation to any future copyright and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright wholly or partially to another person (in this section referred to as the assignee), then, if on the coming into existence of the copyright, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, wholly or partly as the case may be, the copyright shall vest, on coming into existence, in the assignee or his successor in title by virtue of this subsection.

(2) If, at a time when any copyright comes into existence the person who, if he were then living would be entitled to the copyright is dead, the copyright shall devolve as if it had subsisted immediately before his death and he had then been the owner of the copyright.

(3) Subsection (4) of section 22 shall apply, in relation to a licence granted by a prospective owner of any copyright, as it applies in relation to a licence granted by the owner of a subsisting copyright and as if any reference in that subsection to the owner's interest in the copyright included a reference to his prospective interest therein.

Copyright in unpublished works passes under will

24. (1) Where under a bequest a person is entitled, beneficially or otherwise, to

(a) the manuscript or other support on which a literary, dramatic, musical or artistic work was first expressed in material form; or

(b) the material support embodying a sound recording or film,

and the work had not been published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil to it, be construed as including the copyright

in the work in so far as the testator was the owner of the copyright immediately before his death.

**Moral rights
not assignable**

25. The rights conferred under Part III shall be not assignable.

**Transmission of
moral rights on
death**

26. (1) On the death of a person entitled to a right conferred by sections 13, 14 or 16 the right passes

- (a) to a person as he may by testamentary disposition specifically direct; or
- (b) in the absence of any direction, then if the copyright in the work in question forms part of his estate, to person to whom the copyright passes,

and to the extent that, the right does not pass under paragraph (a) or (b), it is exercisable by his personal representatives.

(2) Where copyright forming part of a person's estate passes in part to one person and in part to another, any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.

(3) Where by virtue of paragraph (a) or (b) of subsection (1) a right becomes exercisable by more than one person, then;

- (a) where the right is conferred by section 14 or 16, it is a right exercisable by each of them;
- (b) where the right is conferred by section 13 or 16 it is a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and
- (c) any waiver of the right in accordance with section 18 by one of them does not affect the rights of the others.

(4) A consent or waiver previously given binds any person to whom a right passes by virtue of subsection (1).

(5) Any infringement after a person's death of the right conferred by section 15 is actionable by his personal representatives.

(6) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

PART V – INFRINGEMENT OF RIGHTS

Meaning of action

27. For the purposes of this Part "action" includes a counter claim, and references to the claimant and to the defendant in an action shall be construed accordingly.

Acts infringing copyright

28. (1) The copyright in a protected work is infringed by any person who, not being the owner of the copyright and without the licence of the owner of the work thereof

- (a) does or authorises another unauthorised person to do any of the acts mentioned in section 7 in relation to that work;
- (b) imports an article otherwise than for his private and domestic use in Saint Vincent and the Grenadines that he knows or has reason to believe is an infringing copy of the work;
- (c) in Saint Vincent and the Grenadines or on any ship or aircraft registered in Saint Vincent and the Grenadines,
 - (i) possesses in the course of business;
 - (ii) sells, lets for hire, or by way of trade offers or exposes for sale or hire; or

(iii) by way of trade exhibits in public,

an article which he knows or has reason to believe is an infringing copy of the work.

(2) Subsection (1) (c) shall apply, in relation to the distribution of any article either

(a) for the purposes of trade; or

(b) for other purposes, but only to such an extent as to affect prejudicially the owner of the copyright

as it applies in relation to the sale of the article.

(3) Copyright in a work is infringed by a person who, without the licence of the copyright owner,

(a) makes;

(b) imports into Saint Vincent and the Grenadines;

(c) possesses in the course of a business; or

(d) sells or lets for hire or offers for sale or hire,

an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.

(4) Copyright in a work is infringed by a person who, without the licence of the copyright owner, transmits the work by means of a telecommunications system otherwise than by broadcasting or inclusion in a cable programme service; knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Saint Vincent and the Grenadines or elsewhere.

(5) Where the copyright in a literary, dramatic or musical work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is also liable for the infringement unless when he gave permission he believed, on reasonable grounds that the

performance would not infringe copyright.

(6) Where copyright in a work is infringed by a public performance of the work or by playing or showing of the work in public by means of apparatus for playing sound recordings or showing films or receiving visual images or sounds conveyed by electronic means, the person specified in subsection (8) is also liable for the infringement.

(7) The person referred to in subsection (6) is a person who, when he supplied the apparatus or part of it

- (a) knew or had reason to believe that the apparatus was likely to be used as to infringe copyright; or
- (b) in the case of an apparatus which normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would be so used to infringe copyright.

(8) An occupier of premises who gave permission for the apparatus to be brought onto the premises, is liable for the infringement, if when he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright.

(9) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement, if when he supplied it he knew or had reason to believe that what he supplied or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.

Remedies for Infringement of Economic Rights

Action by owner of copyright for infringement

29. (1) An infringement of copyright shall be actionable in the Court at the suit of the copyright owner, and subject to the provisions of this section, in any action for such an infringement all relief by way of damages, injunction, accounts or otherwise, shall be available to the claimant as is available in any corresponding proceedings in respect of the infringements of other proprietary rights.

(2) Where, in an action for infringement of copyright, it is proved or admitted that

- (a) an infringement was committed; but

- (b) at the time of the infringement the defendant was not aware and had no reasonable grounds for suspecting, that

copyright subsisted in the work which the action relates,

the claimant shall not be entitled under this section to any damages against the defendant in respect of the infringement but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

(3) Where in an action under this section an infringement of copyright is proved or admitted, the Court, having regard to the flagrancy of the infringement, shall have power in assessing damages for the infringement, to award such additional damages as the Court may consider appropriate in the circumstances.

(4) In an action for infringement of copyright in respect of the construction of a building, no injunction or other order shall be made

- (a) after the construction of the building has begun, so as to prevent it from being completed; or
- (b) so as to require the building in so far as it has been constructed, to be demolished.

**Order for
delivery up in
civil
proceedings**

30. (1) Subject to the provisions of this section where a person
- (a) in the course of his business has an infringing copy of a work in his possession, custody or control; or
 - (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work, knowing or having reason to believe that it has been or is being used to make infringing copies,

the copyright owner may apply to the Court for an order that the infringing copy or article be delivered up to him or to such other person

as the Court may direct.

(2) An application under subsection (1) shall not be made after the end of the period specified in section 138 and no order shall be made unless the Court also makes, or it appears to the Court that there are grounds for making, an order under section 135 for the disposal of the infringing copies.

(3) A person to whom an infringing copy or other article is delivered up pursuant to an order made under this section shall, if an order under section 135 is not made, retain it pending the making of an order or the decision not to make an order, under that section.

**Right to seize
infringing
copies**

31. (1) Subject to any decision of the Court under section 135 and to the conditions specified under subsections (2), (3), and (4) of this section, an infringing copy of a work which is found to be exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under section 30 may be seized and detained by him or a person authorised by him.

(2) Prior to the seizure of anything under this section notice of the time and place of the proposed seizure shall be given to the nearest police station.

(3) At the time that anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

(4) For the purposes of this section “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels and aircraft.

**Wide
injunction
available to
licensing bodies**

32. Where, in an action under this Part

(a) the infringement of copyright is proved or admitted;

(b) the plaintiff is a licensing body as defined in section 84 and;

(c) the Court having regard to all material circumstances is satisfied that effective relief

would not otherwise be available to the claimant,

the Court may grant an injunction extending to all the protected works of which the claimant is an owner of the copyright notwithstanding that the infringement related to only one or some of the works.

**Definition of
exclusive
license**

33. (1) For the purposes of this section, “exclusive licence” means a licence in writing, signed by or on behalf of an owner or prospective owner of copyright, authorising the licensee, to the exclusion of all other persons, including the grantor of the license, to exercise a right which by virtue of this Act would apart from the licensee be exercisable exclusively by the owner of the copyright.

(2) Subject to the following provisions of this section an exclusive licensee shall have, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(3) Where an action is brought either by the owner of the copyright or by the exclusive licensee, and the action, in so far as it is brought under section 29, relates to an infringement in respect of which the owner and the exclusive licensee have concurrent rights of action under this section, the owner or exclusive licensee as the case may be, shall not be entitled, except with the leave of the Court to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the other party is either joined as a claimant in the action or added as defendant, save that this section shall not affect the granting of an interlocutory injunction on the application of either of them.

(4) In any action brought by the exclusive licensee by virtue of this section, any defence which would have been available to a respondent in the action, if this section had not been enacted and the action had been brought by the owner of the copyright shall be available to that respondent as against the exclusive licensee,

- (a) if the claimant is the exclusive licensee, shall take into account any liabilities in respect of royalties or otherwise, to which the licence is subject; and
- (b) whether the claimant is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary remedy already awarded to the other party under section 29 in respect of that infringement,

or, as the case may require, any right of action exercisable by the other party under that section in respect thereof.

(5) Where an action is brought in the circumstances mentioned in subsection (2) and the owner of the copyright and the exclusive licensee are not both claimants in the action, the court in assessing damages in respect of any such infringement as is mentioned in that subsection:

- (a) if the plaintiff is the exclusive licensee, shall take into account any liabilities (in respect of royalties or other-wise) to which the licence is subject; and
- (b) whether the plaintiff is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary remedy already awarded to the other party under section 29 in respect of that infringement, or, as the case may require, any right of action exercisable by the other party under that section in respect thereof.

(6) Where an action, in so far as it is brought under section 29, relates wholly or partly to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section, and in that action whether they are both parties to it or not; an account of profits is directed to be taken in respect of that infringement, then, subject to any agreement of which the Court is aware whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the Court shall apportion the profits between them as the Court may consider just and shall give such directions as the Court may consider appropriate for giving effect to that apportionment.

(7) In an action brought either by the owner of the copyright or by the exclusive licensee

- (a) no judgement or order for the payment of damages in respect of an infringement of copyright shall be given or made under section 29, if a final judgement or order has been given or made awarding an account of profits to the other party under

that section in respect of the same infringement; and

- (b) no judgement or order for an account of profits in respect of an infringement of copyright shall be given or made under that section, if a final judgement or order has been given or made awarding either damages or an account of profits to the other party under that section in respect of the same infringement.

(8) Where, in an action brought in the circumstances mentioned in subsection (2), whether by the owner of the copyright or by the exclusive licensee, the other party is not joined as a claimant either at the commencement of the action or subsequently but is added as a defendant, he shall not be liable for any costs in the action unless he enters an appearance and takes part in the proceedings.

(9) The copyright owner shall notify any exclusive licensee having concurrent rights before applying under section 30 for an order for the delivery up of infringing copies of a work or before exercising the right of seizure under section 31; and the Court may, on the application of the licensee, if it thinks fit, having regard to the terms of the licence, make an order under section 30 or make an order prohibiting or permitting the exercise by the copyright owner of the right conferred under section 31.

Moral and Related Rights

**Infringement of
right to be
identified as
author or
director**

34. (1) Subject to subsection (2), the right conferred by section 13 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts shall not constitute an infringement of the right conferred by section 13 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work:

- (a) fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme;

- (b) the incidental inclusion of the work in an artistic work, sound recording, film, broadcast or cable programme;
- (c) the use of the work for examination purposes;
- (d) acts done for the purposes of parliamentary or judicial proceedings or proceedings of a statutory inquiry;
- (e) the use of design documents and models;
- (f) the use of a design derived from artistic work;
- (g) acts permitted in relation to anonymous or pseudonymous works on the assumption that copyright in the work has expired or that the author is dead.

Infringement of right to object to derogatory treatment of work

35. (1) For the purposes of this section “derogatory treatment” has the same meaning as that specified in section 14.

(2) The right conferred on an author and a director by section 13 to object to derogatory treatment of his work is infringed where the following acts are done in relation to that work:

- (a) in the case of a literary, dramatic or musical work, the right is infringed by a person who,
 - (i) publishes commercially, performs in public, broadcasts or includes in a cable programme service, a derogatory treatment of the work; or
 - (ii) issues to the public copies of a film or sound recording of or including a derogatory treatment of the work.
- (b) in the case of an artistic work, the right is infringed by a person who,
 - (i) publishes commercially or

exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme service a visual image of a derogatory treatment of the work;

- (ii) shows in public a film which includes a visual image of a derogatory treatment of the work or issues to the public copies of such film; or
- (iii) in the case of a work of architecture in the form of a model for a building or in the case of a sculpture or work of craftsmanship issues to the public

copies of a graphic work representing or of a photograph of, a derogatory treatment of the work;

- (c) paragraph (b) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment, he has the right to require the identification to be removed;
- (d) in the case of a film, the right is infringed by a person who,
 - (i) shows in public, broadcasts or includes in a cable programme service a derogatory treatment of the film; or
 - (ii) issues to the public copies of a derogatory treatment of the film,

or who, along with the film, plays in public, broadcasts or includes in a cable programme

service, or issues to the public copies of, a derogatory treatment of the film sound track.

**Infringement
by possession of
infringing
article**

36. (1) The right conferred by section 14 is also infringed by a person who

- (a) possesses in the course of a business;
- (b) sells or lets for hire or offers or exposes for sale or hire;
- (c) in the course of a business, exhibits in public or distributes; or
- (d) distributes otherwise than in the course of a business, so as to affect prejudicially the honour or reputation of the author or director,

an article that is, and which he knows or has reason to believe is an infringing article.

(2) For the purposes of this section, an “infringing article” means a work or a copy of a work which

- (a) has been subjected to derogatory treatment as defined in section 14; and
- (b) has been or is likely to be subject of any of the acts mentioned in section 35 in circumstances infringing that right.

**False
attribution of
work
infringement of
right**

37. (1) Subject to the provisions of this section, the right conferred on a person not to have a literary, dramatic, musical or artistic work falsely attributed to him as author, is infringed by a person who

- (a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution; or
- (b) exhibits in public an artistic work or a copy of an artistic work in or on which there is false attribution.

(2) The right conferred on a person not to have a film falsely attributed to him as director is infringed by a person who issues

to the public copies of a work of any person of those descriptions in or on which there is a false attribution

- (a) in the case of a literary, dramatic or musical work, performs the work in public, broadcasts it or includes it in a cable programme service as being the work of a person; or
- (b) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service as being directed by a person,

who knows or ought to have known that the attribution is false

- (c) in the course of a business
 - (i) possesses or deals with a copy of a work referred to in subsection (1) in or on which there is a false attribution; or
 - (ii) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it,

knowing or having reason to believe that there is an attribution and that it is false.

- (d) in the case of an artistic work,
 - (i) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author; or
 - (ii) deals with a copy of such a work as testing a copy of the unaltered work of the author,

knowing or having reason to believe that this is not the case.

- (3) For the purposes of this section,
 - (a) “attribution” in relation to a work means a statement expressed or implied, as to who is the author or director;
 - (b) references to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public or distributing.
- (4) This section shall apply where, contrary to the fact,
 - (a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person; or
 - (b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,

as it applies where the work is falsely attributed to a person as author.

Infringement of privacy right in photo-graphs, etc.

38. The right conferred by section 16 in relation to a commissioned photograph or film is infringed by a person who does or authorises the doing of any act mentioned in that section in relation to that work; but the right is not infringed by any act which, pursuant to Part VI would not infringe copyright in the work.

Remedies for Infringement of Moral Rights and Related Rights

Remedies for infringing moral rights etc.

39. (1) The infringement of a right conferred under section 13, 14, 15, or 16 is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) In an action for infringement of the right conferred by section 14, the Court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made on such terms and in such manner as may be approved by the Court, disassociating the author or director from the treatment of the work.

(3) Where in any action an infringement of a right

referred to in subsection (1) is proved or admitted, the Court may order the defendant to publish such correction in the terms and in a manner as the Court may direct.

Presumptions

**Presumptions
as to
subsistence and
ownership of
copyright**

40. In an action brought by virtue of this Part,
- (a) copyright shall be presumed to subsist in the work to which the action relates if the defendant does not put in issue the question whether copyright subsists therein;
 - (b) where the subsistence of the copyright is proved or is presumed in pursuance of paragraph (a), the claimant shall be presumed to be the owner of the copyright, if he claims to be the owner of it and the defendant does not put in issue the question of his ownership thereof; and
 - (c) if the question arises as to whether an article is an infringing copy of a work and it is shown,
 - (i) that the article is a copy of the work; and
 - (ii) that the copyright subsists in the work or has subsisted at any time

it shall be presumed until the contrary is proved that the article was made at a time when copyright subsisted in the work.

**Presumption in
relation to
authorship of
protected
works**

41. (1) Subject to section 40, where in the case of a protected work, a name purporting to be that of the author appears on copies of the work as published or, in the case of an artistic work, appeared on the work when it was made, the person whose name appears, shall, in any action brought by virtue of this Part, be presumed, unless the contrary is proved, to be the author.

(2) In the case of a protected work alleged to be a work of joint ownership, subsection (1) shall apply in relation to each

person alleged to be one of the authors of the work as if references in the subsection to the author were references to one of the authors.

(3) Where in an action brought by virtue of this Part with respect to a protected work, subsection (1) does not apply, but it is established that

(a) pursuant to paragraph (b) in section 6 (1) the work qualifies for copyright protection by virtue of the country of first publication; and

(b) a name purporting to be that of the publisher appeared on copies of the work as first published,

then, unless the contrary is proved, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be

presumed to have been the owner of the copyright at the time of the publication.

(4) Where in an action brought by virtue of this Part with respect to a protected work it is established that the author of the work is dead

(a) the work shall be presumed to be an original work unless the contrary is proved; and

(b) if it is alleged by the claimant that a publication specified in the allegation was the first publication of the work and it took place in a country and on a date so specified, that publication shall be presumed, unless the contrary is proved, to have been the first publication of the work and to have taken place in that country and on that date.

(5) For the purpose of this section, a fact shall be taken to be established if it is proved or admitted or if it is presumed in pursuance of this section.

**Presumptions
where action
relates to sound**

42. (1) In an action brought by virtue of this Part with respect to a sound recording, film or computer programme, the presumptions specified in this section shall apply.

**recordings,
films and
computer
programme**

presumptions specified in this section shall apply.

(2) In an action brought by virtue of this Part with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating

- (a) that a named person was the owner of copyright in the recording at the date of issue of the copies; or
- (b) that the recording was first published in a specified year or in a named country,

the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(3) In an action brought by virtue of this Part with respect to a film, where copies of the film as issued to the public bear a statement

- (a) that a named person was the author or director of the film;
- (b) that a named person was the owner of copyright in the film at the date of issue of the copies; or
- (c) that the film was first published in a specified year or in a named country,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(4) In an action brought by virtue of this Part with respect to a computer programme, where copies of the programme are issued to the public in electronic form bearing a statement,

- (a) that a named person was the owner of copyright in the programme at the date of issue of the copies; or
- (b) that the programme was first published in a named country or that copies of it were first issued to the public in electronic form in a specified year, the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until

the contrary is proved.

(5) The presumptions specified in subsections (2), (3) and (4) apply in an action relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.

(6) In an action brought by virtue of this Part with respect to a film, where the film as shown in public, broadcast or included in a cable programme service bears a statement

- (a) that a named person was the author or director of the film; or
- (b) that a named person was the owner of copyright in the film immediately after it was made,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(7) Pursuant to subsection (1) the presumptions shall also apply in an action relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast or included in a cable programme service.

Offences

**Withdrawal of
privilege
against
illumination of
self or spouse in
infringement
and related
proceedings**

43. (1) For the purposes of this section “related offence” in relation to any proceedings to which subsection (2) applies means,

- (a) in the case of proceedings within subsection (3) (a) or (b),
 - (i) any offence committed by or in the course of the infringement to which those proceedings relate; or
 - (ii) any offence not within subparagraph (1) committed in connection with that infringement being an offence involving fraud or dishonesty;
- (b) in the case of proceedings within section 3 (c) any offence revealed by the facts on which the claimant relies in those proceedings;

“related penalty” in relation to any proceedings to which subsection (2) applies, means,

- (a) in the case of proceedings within subsection (3) (a) or (b), any penalty incurred in respect of anything done or omitted in connection with the infringement to which those proceedings relate;
- (b) in the case of proceedings within subsection 3 (c) any penalty incurred in respect of any act or omission revealed by the facts on which the claimant relies in those proceedings.

(2) In any proceedings to which this subsection applies a person shall not be excused, by reason of the fact that to do so would tend to expose that person, or his or her spouse, to proceedings for a related offence or for the recovery of a related penalty

- (a) from answering any question put to that person in the first mentioned proceedings; or
- (b) from complying with any order made in those proceedings.

(3) Subsection (2) applies to the following civil proceedings in the High Court, namely:

- (a) proceedings for infringement of copyright;
- (b) proceedings brought to obtain disclosure of information relating to any infringement of such rights; and
- (c) proceedings brought to prevent any apprehended infringement of such rights.

(4) Subject to subsection (5), no statement or admission made by a person

- (a) in answering a question put to him in any proceedings to which subsection (2)

applies; or

- (b) in complying with an order made in any such proceedings,

shall, in proceedings for any related offence or for the recovery of any related penalty, be admissible in evidence against that person or against the spouse of that person.

(5) Nothing in subsection (4) shall render any statement or admission made by a person as therein mentioned inadmissible in evidence against that person in proceedings in the Court.

(6) Any reference in this section to civil proceedings in the High Court of any description includes a reference to proceedings on appeal arising out of civil proceedings in the High Court of that description.

Offences in respect of dealings which infringe copyright

44. (1) Any person who, without a licence of the copyright owner, at a time when copyright in a work subsists by virtue of this Act

- (a) makes for sale or hire; or
- (b) in the course of a business sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes;
- (c) imports into Saint Vincent and the Grenadines for purposes other than his private and domestic use; or
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

any article which he knows or has reason to believe is an infringing copy of that work, commits an offence.

(2) Any person who, at the time when copyright subsists in a work by virtue of this Act makes or has in his possession an article specifically designed or adapted for making copies of a particular work, knowing that it is to be used for making infringing copies for sale or hire or for use in the course of business, commits an offence.

- (3) Any person who causes
- (a) a literary, dramatic or musical work to be performed in public; or
 - (b) a sound recording or film to be played, or as the case may be, shown in public, otherwise than by reception of a broadcast or cable programme, knowing or having reason to believe that copyright subsists in the work or that the performance constitutes an infringement of the copyright,

commits an offence.

(4) Any person who is convicted of an offence under subsection (1) shall be liable on summary conviction in the case of a first conviction to a fine not exceeding five thousand five hundred dollars for each article to which the offence is related, and in the case of any subsequent conviction, to a fine as may be determined by the Magistrates Court or to imprisonment for a term not exceeding two years.

(5) Any person who is convicted of an offence under this section, other than an offence referred to under subsection (1), shall be liable on summary conviction to a fine not exceeding one thousand five hundred dollars and, in the case of any subsequent conviction to such fine, or to imprisonment for a term not exceeding twelve months.

(6) For the purposes of this Part “article” includes every infringed copy of a work.

**Presumptions
not to apply**

45. The presumptions specified in sections 40 and 41 do not apply to proceedings for an offence under section 444 but without prejudice to their application to proceedings for an order under section 46.

**Order to
deliver up in
criminal
proceedings**

46. (1) Subject to subsection (2), the Court before which proceedings are brought against a person for an offence under section 46 may, if it is satisfied that at the time of his arrest or charge

- (a) he had in his possession, custody or control in the course of a business an infringing copy of a protected work; or

- (b) he had in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work knowing or ought to have known that it has been or was to be used to make infringing copies,

order that the infringing copy or article be delivered up to the copyright owner or to any other person as the Court may direct.

(2) An order may be made by the Court of its own motion or on the application of the prosecution and such order may be made whether or not the person is convicted of the offence, so, however, that the Court shall not make an order

- (a) after the time specified in section 133, or
- (b) if it appears to the Court unlikely that any order will be made under section 134.

(3) An appeal lies from an order made under this section to the Court of Appeal.

(4) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall retain it pending the making of an order or the decision not to make an order under section 135.

Supplementary

Application of provisions of re-entry

47. For the purposes of this Part, the provisions of sections 131 and 132 shall apply in respect of the entry and search of any premises.

Provisions for restricting importation of infringing copies

48. (1) The owner of the copyright in any published literary, dramatic or musical work may give notice in writing to the Comptroller

- (a) that he is the owner of the copyright in the work; and
- (b) that he requests the Comptroller during a period specified in the notice to treat as prohibited goods copies of the work, film, or sound recording to which this section

applies.

(2) The period specified in a notice given under subsection (1) shall not exceed five years and shall not extend beyond the end of the period for which the copyright may subsist.

(3) This section shall apply in the case of a literary or musical work, film or sound recording, to any copy made outside Saint Vincent and the Grenadines which is an infringing copy of the work, film or sound recording.

(4) Where a notice has been given under this section in respect of a literary or a musical work, film or sound recording and has not been withdrawn, the importation into Saint Vincent and the Grenadines at a time before the end of the period specified in the notice, of any copy of the work, film or sound recording to which this section applies shall, subject to the following provisions of this section, be prohibited, but this subsection shall not apply to the importation of any article by a person for his private and domestic use.

(5) The owner of the copyright in a literary or musical work, film or sound recording who gives notice to the Comptroller under this section shall comply with such conditions with respect to

- (a) the form of the notice;
- (b) the furnishing of evidence;
- (c) the payment of fees;
- (d) the giving of security; and
- (e) any other incidental or supplementary matters

as may be prescribed.

(6) Notwithstanding any provision in the Customs (Control and Management) Act, a person shall not be liable to any penalty under that Act, other than forfeiture of the goods, by reason that any goods are prohibited by virtue of this section.

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PART VI – EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

Preliminary

Definitions

49. (1) For the purposes of this Part;
“facsimile copy” includes a copy which is reduced or enlarged in scale;

“sufficient acknowledgement” means an acknowledgement identifying the work in question by its title or other description and, unless the work is anonymous, or the author has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

General Exceptions

Research and private study

50. (1) Subject to section 52, fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) Copyright by a person other than the researcher or student himself is not fair dealing if

(a) in the case of a librarian, or a person acting on behalf of a librarian he does anything which regulations, would not permit to be done under section 62 (a) or 63 (1) (b);

(b) in any other case, the person doing the copyright knows or has reason to believe it will result in copies of substantially the same material being provided to more than one person at substantially the same time for substantially the same purpose.

Criticism, review and reporting

51. (1) Subject to section 52 fair dealing with a work for the purposes of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided it is accompanied by a sufficient acknowledgement.

(2) Subject to subsection (3) and section 53, fair dealing with a protected work other than a photograph, for the purpose of reporting current events does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

**Determining
fair dealing**

52. For the purpose of determining whether an act done in relation to a work constitutes fair dealing, the Court in determining the question shall take account of all factors which appear to it to be relevant, including

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and
- (d) the effect of the act upon the potential market for or the commercial value of the work.

**Incidental
inclusion of
protected work**

53. Copyright in a work is not infringed

- (a) by its incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme; or
- (b) by the issue to the public of copies or the playing, showing, broadcasting or inclusion in a cable programme service of anything whose making was not an infringement of copyright by virtue of paragraph (a),

and for the purposes of this section, a musical work, words spoken or sung with music, or so much of a sound recording, broadcast or cable programme as includes a musical work or such words, shall not be regarded as incidentally included if it is deliberately included.

**Anonymous
and
pseudonymous
literary works**

54. (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by any act done at a time when, or in pursuance of an arrangement made at any time when

- (a) it is not possible by reasonable inquiry to ascertain the identity of the author; and

- (b) it is reasonable to assume that
 - (i) the copyright has expired; or
 - (ii) the author died seventy five years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1) (b) (ii) does not apply in relation to work in which copyright originally vested in an international organization by virtue of section 143 and in respect of which an order under that section specified a copyright period longer than seventy five years.

- (3) In relation to a work of joint authorship
 - (a) the reference in subsection (1) to its being possible to ascertain the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors; and
 - (b) the reference in subsection (1) (b) (ii) to the author having died shall be construed as a reference to all the authors having died.

Use of notes of recordings of spoken words, etc.

55. (1) Where a record of spoken word is made, in writing or otherwise, for the purpose of;

- (a) reporting current events; or
- (b) broadcasting or including in a cable programme service the whole or part of the work,

it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it for that purpose providing the conditions specified in subsection (2) are met.

(2) The conditions referred to in subsection (1) are that

- (a) the record is a direct record of the spoken words and is not taken from a previous

record or from a broadcast or cable programme;

- (b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;
- (c) the use of the record or material taken from it is not a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and
- (d) the use is by or with the authority of a person who is lawfully in possession of the record.

Use of Work for Educational Purposes

Acts done for purposes of instruction or examination

56. (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by being copied in the course of instruction or of preparation for instruction, provided the copying is done by a person giving or receiving instruction and is not by means of a reprographic process.

(2) Copyright in a sound recording, film, broadcast or cable programme is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.

(3) Copyright in a work is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to candidates or answering the questions.

Anthologies for educational use

57. (1) The inclusion, in a collection intended for use in educational institutions of a short passage from a published literary or dramatic work does not infringe copyright in the work if

- (a) the collection is described in the title and in any advertisements thereof issued by or on behalf of the publisher, as being so intended;

- (b) the work was not itself published for the use of educational institutions;
- (c) the collection consists mainly of material in which no copyright subsists;
- (d) the inclusion is accompanied by a sufficient acknowledgement; and
- (e) not more than one other such passage or parts from works by the same author is published by the same publisher within the period of five years immediately preceding the publication of that collection.

(2) Subsection (1) does not authorise the inclusion of more than two excerpts from protected works by the same author in collections published by the same publisher over any period of five years.

(3) In relation to any given passage, the reference in subsection (2) to excerpts from works by the same author

- (a) shall be taken to include excerpts from works by him in collaboration with another; and
- (b) if the passage in question is from such a work, shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.

**Performing,
playing or
showing works
in course of
educational
activities**

58. (1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational institution and other persons directly connected with the activities of the institution,

- (a) by a teacher or pupil in the course of the activities of the institution; or
- (b) at the institution by any person for the purposes of the instruction;

is not a public programme for the purposes of infringement of copyright.

(2) The play or showing of a sound recording, film,

broadcast or cable programme before such an audience at an educational institution for the purposes of instruction is not a playing or showing of the work in public for the purposes of the infringement of copyright.

(3) A person is not for this purpose directly connected with the activities of the educational institution simply because he is the parent of the pupil at the institution.

Recording of broadcast by educational establishments

59. (1) Subject to subsection (2), a recording of a broadcast or cable broadcast programme or a copy of such a recording may be made by or on behalf of an educational institution for the educational purposes of that institution without thereby infringing the copyright in the broadcast or cable programme or in any work included in it.

(2) Subsection (1) shall not apply if or to the extent that, there is a licensing scheme under which licences are available authorising the making of the recordings or copies, and the person making the recordings knows or ought to have been aware of that fact.

Restriction on reprographic copying from published works

60. (1) Subject to the provisions of this section, reprographic copies of passages from published literary, dramatic or musical work may be made by or on behalf of an educational institution for the purposes of instruction without infringing any copyright in the work or in the typographical arrangement.

(2) Not more than one percent of any work may be copied by or on behalf of an educational institution by virtue of this section in any quarter, that is to say, in any period 1st January to 31st March, 1st April to 30th June, 1st July to 30th September, 1st October to 31st December.

(3) Copyright is not authorised by this section if, or to the extent that, there is a licensing scheme under which licences are available authorising the copying in question and the person making the copies know or ought to have been aware of that fact.

(4) Where a licence is granted to an educational institution authorising the reprographic copying of passages from any published literary, dramatic or, musical work, for use by the institution, then, any term of that licence which purports to restrict the proportion of work which may be copied whether on payment or free of charge, to less than that permitted under this section shall be of no effect.

Subsequent dealing with

61. (1) Where a copy of a work would be an infringing copy if the making thereof were not authorised under section 56 59 or

**authorised
copies**

copy if the making thereof were not authorised under section 56, 59 or 660 and such copy is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing and, if that dealing infringes copyright, for all subsequent purposes.

(2) For the purposes of this section “dealt with” means sold, or let for hire or offered or exposed for sale or hire.

Exceptions affecting Libraries and Archives

**Interpretation
of references**

62. (1) In sections 62 to 66 references to “librarian” or “archivist” include references to a person acting on his behalf.

(2) Regulations may provide that a librarian or archivist who is required to be satisfied as to a material matter before making or supplying a copy of a work

(a) is entitled to rely on a declaration as to that matter, signed by the person requesting the copy, unless he is aware that the declaration is false in any material particular;

(b) in such cases, shall not make or supply a copy to any person in the absence of a declaration by that person.

(3) Where a person requesting a copy makes a declaration that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him, that person shall be liable for infringement of copyright as if he had made the copy himself, and the copy supplied shall be treated as an infringing copy.

**Supply by
librarian of
copies of
published work**

63. (1) The librarian of a prescribed library or archive may, if the conditions are complied with

(a) make and supply a copy of an article in a periodical; or

(b) make and supply from a published edition, a copy of part of a literary, dramatic or musical work, not being an article in a periodical,

without infringing any copyright subsisting in the text of the article or in the work, as the case may be, or in any illustrations accompanying such

article or work, or in the typographical arrangement thereof.

(2) The conditions prescribed pursuant to subsection (1) shall include the following:

- (a) that copies shall be supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
- (b) in relation to an article, that no person shall be furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical;
- (c) in relation to a work referred to in paragraph (b) of subsection (1), that no person shall be furnished with more than one copy of the same material or of a copy of more than a reasonable proportion of any work;
- (d) that persons to whom copies are supplied are required to pay for them a sum not less than the cost; including a contribution to the general expenses of the library, attributable to their production;
- (e) that requirement of persons shall be regarded as similar if the requirements are for copies of substantially the same material at substantially the same hire and substantially the same purpose, and
- (f) that requirements of persons shall be regarded as related if those persons received instruction to which the material is relevant at the same time and place.

(3) Subsection (1) shall not apply if or to the extent that there is a licensing scheme under which licences are available authorising the making of such copies and the person making the copies know or ought to have been aware of that fact.

**Supply of
copies to other
libraries**

64. (1) The librarian of a library or archive may, if the prescribed conditions are complied with, make and supply to another library or archive a copy of

- (a) an article in a periodical; or
- (b) the whole or part of a published edition of a literary, dramatic or musical work,

without infringing any copyright in the text of the article or the work, or in any illustrations accompanying such article or work or, in the case of a published edition, in the typographical arrangement.

(2) Paragraph (b) of subsection (1) shall not apply if, at the time the copy is made, the librarian making it has knowledge or could, by reasonable inquiry, ascertain the name and address of a person entitled to authorise the making of the copy.

**Replacing
copies of works**

65. (1) The librarian of a library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive for the purpose of

- (a) preserving or replacing the item by placing the copy in such permanent collection in addition to or in place of the item;
- (b) replacing in the permanent collection of another prescribed library or archive an item which has been lost, destroyed or damaged,

without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement.

(2) The conditions shall include provisions restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question for the purpose.

**Copying of
unpublished
work**

66. (1) Subject to subsection (2), the librarian of a library or archive may, if the conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or in any illustrations accompanying it.

- (2) Subsection (1) shall not apply where
 - (a) the work is published at the time when the copies are made; or
 - (b) the copyright owner has prohibited copying of the work, and at the time of the making of the copy the librarian ought to have been aware of that fact.
- (3) The prescribed conditions shall include the following:
 - (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study and will not use them for any other purpose;
 - (b) that no person is furnished with any more than one copy of same material; and
 - (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost; including a contribution to the general expenses of the library or archive, attributable to their production.

Exceptions Relating to Public Administration

Recording for archival purposes

67. (1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any copyright in the broadcast or cable programme or in any work included in it.

(2) The designated body referred to under subsection (1) shall be prescribed by the Minister, and the Minister shall not designate a body unless he is satisfied that it is not established or conducted for profit.

Parliamentary and judicial proceedings etc.

68. (1) Copyright in a work is not infringed by anything done for the purposes of parliamentary or judicial proceedings or, subject to subsection (3), for the purposes of reporting such proceedings.

(2) Copyright in a work is not infringed by anything done for the purposes of the proceeding of a statutory inquiry or, subject

to subsection (4), for the purposes of reporting any such proceeding held in public.

(3) The provisions of subsection (1) and (2) relating to the reporting of proceedings shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

(4) Copyright in a work is not infringed by the issue to the public of copies of the report of a statutory inquiry containing the work or material from it.

(5) For the purposes of this section, “statutory inquiry” means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under an Act of Parliament.

Public records

69. Where any protected work or a reproduction of any such work is comprised in any public record and is open to public inspection, the copyright in the work is not infringed by the making or supplying to any person of any copy of the work by or under the direction of any officer in charge of the record.

Design documents and models

70. (1) It is not an infringement of any copyright in a design document or in a model that records or embodies a design for anything save for an artistic work or a typeface, to make an article to the design or to copy an article made to the design.

(2) It is not an infringement of any copyright to issue to the public or to include in a film, broadcast or cable programme service anything the making of which was, by virtue of subsection (1), not an infringement of that copyright.

(3) For the purposes of this section

“design” means the design of any aspect of the shape or configuration whether internal or external, of the whole or part of an article other than surface decoration;

“design document” means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise.

Exploitation of a design derived from

71. (1) Where an artistic work has been exploited by or with the licence of the copyright owner by

artistic work

- (a) making by an industrial process articles falling to be treated under this Act as copies of the work, and
- (b) marketing such articles in Saint Vincent and the Grenadines or elsewhere,

then, after the end of the period of fifty years from the end of the calendar year in which the articles are first marketed, a person may, without infringing copyright in the work, copy the work by making articles of any description or by doing anything in relation to articles so made.

(2) Where only part of an artistic work is exploited in the manner described in subsection (1), then, the provisions of that subsection apply only in relation to that part.

(3) The Minister may by order make provision

- (a) as to the circumstances in which an article or any description of article is to be regarded for the purposes of this section as made by an industrial process;
- (b) excluding from the operation of this section such articles of a primarily literary or artistic character as he thinks fit.

(4) In this section

- (a) references to articles do not include films; and
- (b) references to the marketing of an article are references to its being sold or let for hire or offered or exposed for sale or hire.

Exception Relating to Works in Electronic Form

Transfer of works in electronic form

72. (1) Where a work in electronic form has been purchased on terms which expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work or to adapt it or to make copies of an adaptation in connection with his use of it, then, in the absence of any express terms

- (a) prohibiting the transfer of the copy by the purchaser or imposing an obligation which continues after a transfer or prohibiting the assignment of any licence or terminating any licence on a transfer; or
- (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do anything which the purchaser was allowed to do may also be done by a transferee without infringement of copyright.

(2) Any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall, after the transfer, be treated as an infringing copy for all purposes.

(3) Subsections (1) and (2) apply where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

(4) This section applies also on a subsequent transfer.

*Miscellaneous Exceptions Relating to Literary,
Dramatic, Musical and Artistic Works*

**Statutory
licences:
recordings for
broadcasting**

73. (1) Where by virtue of an assignment or licence a person is authorised to broadcast or include in a cable programme service, a literary, dramatic, musical or artistic work or a film or sound recording from a place into Saint Vincent and the Grenadines but, apart from this subsection, would not be entitled to make copies of it, then, subject to the conditions specified in subsection (2), the authority contained in the assignment or licence shall be deemed to extend to making one copy only for the purposes, and subject to the conditions, in subsection (2).

(2) Subsection (1) shall apply only if the following conditions are satisfied:

- (a) the copy shall not be used for making any further copies or for any other purpose except either for broadcasting or inclusion in a cable programme service in accordance with the assignment or licence, or for archival purposes; and

- (b) the copy, unless kept for archival purposes, shall be destroyed before the end of the period of ninety days beginning with the day on which it is first used for broadcasting or included in a cable programme service in pursuance of the assignment or licence, or such extended period as may be agreed between the person who made the copy and the person who in relation to the making of copies of the description in question is the owner of the copyright.

(3) A copy made in accordance with subsection (1) shall be treated as an infringing copy;

- (a) for the purposes of any use in breach of condition (a), and of subsection (2); and
- (b) for all purposes after that condition or condition (b) of subsection (2) has been broken.

(4) Where records of a literary, dramatic or musical work have with the licence of the owner of the copyright in the work, been previously made or imported into Saint Vincent and the Grenadines, for the purposes of retail sale, then, any person may after the expiry of the period of four months immediately following the date of the first authorised manufacture in, or importation into, Saint Vincent and the Grenadines of such records, and without first obtaining a licence from the owner of the copyright in the work, make or authorise the making of records of it.

(5) Subsection (4) shall only apply where

- (a) the person intends to sell the records by retail, or to supply them for the purposes of being sold by retail by another person, or intends to use them for making other records which are to be so sold or supplied;
- (b) the person pays royalties calculated at the prescribed rates;

- (c) complies with such conditions relating to notice, method and time of payment, administration of royalties paid and other matters, as may be prescribed; and
- (d) the person who makes or authorises the making of records pursuant to this subsection shall not make or authorise the making of any alterations in, or omissions from the work, unless records of that work containing similar alterations and omissions have been previously made by, or with the licence of, the owner of the copyright or unless such alterations and omissions are reasonably necessary for the adaptation of the work to the record in question.

(5) Where a literary, dramatic, musical or artistic work or film or sound recording is broadcast from a place within Saint Vincent and the Grenadines or another country with the licence of the copyright owner, any person may, without obtaining the licence of the copyright owner incorporate by means of the reception of the broadcast, the work in a cable programme service:

Provided that,

- (a) the transmission by the cable service takes place simultaneously with the reception of the broadcast;
- (b) the programme in which the literary, dramatic, musical or artistic work or film or sound recording is incorporated, is transmitted without any alteration of any kind; and
- (c) the copyright owner shall be entitled to receive from the person providing the cable programme service, equitable remuneration in respect of the transmission, to be fixed in remuneration in respect of the transmission, to be fixed in default of agreement, by the Court,

and for the purposes of this subsection, an alteration to a programme includes the addition thereto of new material not contained in the programme as broadcast, or the omission from the transmission of any material contained in the programme as broadcast; and the term “material” includes a commercial advertisement.

Reading or recitation in public

74. (1) The reading or recitation in public of any reasonable extract from a published literary or dramatic work is not an infringement of copyright in the work, if accompanied by a sufficient acknowledgement.

(2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service of a reading or recitation which, by virtue of subsection (1), does not infringe copyright in the work, if the recording, broadcast or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection.

Representation of artistic works on public display

75. (1) This section applies to

- (a) buildings;
- (b) sculptures, models of buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.

(2) The copyright in such a work is not infringed by

- (a) making a graphic work representing it;
- (b) making a photograph or film of it; or
- (c) broadcasting or including in a cable programme service a visual image of it.

(3) The copyright in such a work is not infringed by the issue to the public of copies, or the broadcasting or inclusion in a cable programme service, of anything whose making was, by virtue of this section, not an infringement of copyright.

Reconstruction of buildings

76. Anything done for the purposes of reconstructing a building does not infringe any copyright in the building or in any drawings or plans in accordance with which the building was, by or with the licence of the copyright owner, constructed.

**Subsequent work
by same artist**

77. Where the author of an artistic work is not the copyright owner, he does not infringe the copyright in the work by copying it in making another artistic work, provided he does not repeat or imitate the main design of the earlier work.

Miscellaneous Exceptions Respecting Broadcasts

**Recording
broadcasts for
programme
supervision**

78. Copyright is not infringed by the making or use by a licensed broadcasting organisation or entity for the purpose of maintaining supervision and control over programmes, of recordings of those programmes.

**Recording for
purposes of
time shifting**

79. The making for private and domestic use of a recording of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or cable programme or in any work included in it.

**Provision of
subtitled copies
of broadcast or
cable
programme**

80. (1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, copies which are sub-titled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them.

(2) For the purposes of this section, “designated body” means a body designated for the purposes of this section by order of the Minister, except that the Minister shall not designate a body unless he is satisfied that it is not established or conducted for profit.

Adaptations

81. An act which by virtue of this Part may be done without infringing copyright in a literary, dramatic or musical work does not where that work is an adaptation, infringe any copyright in the work from which the adaptation was made.

Prescribed Exceptions

**Power of
Minister to
prescribe
exceptions to
infringement**

82. (1) Subject to the provisions of this section, the Minister may by order provide that the copyright in a work of the description or category specified in the order is not infringed where, in relation to such work, such acts as are specified in the order are done in the circumstances so specified.

(2) The Minister shall not make an order under subsection (1) unless he is satisfied that the acts specified in the order in

relation to the work

- (a) are necessary in the public interest in connection with an event of national importance;
 - (b) would not conflict with the normal exploitation of the work; and
 - (c) would not unreasonably prejudice the legitimate interest of the owner of the copyright in the work.
- (3) An order made under subsection (1) may:
- (a) contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purposes of giving due effect to the order;
 - (b) subject to section 96 prescribe the amount, or the formula by which the amount shall be calculated, which shall be paid by way of equitable remuneration to the owner of the copyright in any work to which the order relates.
- (4) No order may be made under this section unless the Minister is satisfied
- (a) that the acts specified are to be done in the public interest in connection with an event of national importance, and
 - (b) that the effect of the order would not contravene any convention relating to copyright to which Saint Vincent and the Grenadines is a party.

PART VII – COPYRIGHT LICENSING

Preliminary

Definitions

83. (1) For the purposes of this Part;
- “copyright licence” means a licence to do, or

authorise the doing of, any of the acts restricted by copyright in relation to works of one or more than one author;

“licensing body” means a society or other organisation which has as its main object or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of licences, and whose objects include the granting of licences covering works of more than one author;

“licensing scheme” means a scheme setting out;

- (a) the classes of cases in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant licences; and
- (b) the terms on which licences would be granted in those classes of cases.

(2) References in this Part to licensors or licensing schemes covering works of more than one author do not include licences or schemes covering only

- (a) a single collective work of which the authors are the same; or
- (b) works made by, or by employees of or commissioned by, a single individual, firm, company or group of companies.

Licensing schemes to which sections 82-87 apply

84. The provisions of sections 83 to 90 apply to licensing schemes of the following descriptions:

- (a) licensing schemes operated by licensing bodies in relation to the copyright in literary, dramatic, musical or artistic works or films, or film soundtracks when accompanying a film, which cover works of more than one author, so far as they relate to licences for
 - (i) copying the work;

- (ii) performing, playing or showing the work in public; or
 - (iii) broadcasting the work or including it in a cable programme service;
- (b) licensing schemes in relation to the copyright in sound recordings other than film sound-tracks when accompanying a film, broadcasts or cable programmes or the typographical arrangement of published editions; and
 - (c) licensing schemes in relation to the copyright in sound recordings, films or computer programmes so far as they relate to licences for the rental of copies to the public.

Reference of proposed licensing scheme to Court

85. (1) The terms of a licensing scheme which a licensing body proposes to operate may be referred to the Court by an organisation claiming to be representative of persons who require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.

(2) The Court shall first decide whether to entertain the reference and decline to do so on the ground that the reference is premature.

(3) If the Court decides to entertain the reference it shall consider the matter referred and make such order, confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Court may determine to be reasonable in the circumstances.

(4) An order may be made under subsection (3) so as to be in force indefinitely or for such period as the Court may determine.

Reference of existing licensing scheme to Court

86. (1) If during the operation of a licensing scheme a dispute arises between the licensing body and

(a) a person claiming that he requires a licence in a case of a description to which the scheme applies; or

(b) an organisation claiming to be

representative of such person,

that person or organisation may refer the scheme to the Court in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Court under this section shall remain in operation until proceedings on the reference are concluded.

(3) The Court shall consider the matter in dispute and make such order, either confirming or varying the scheme so far only as it relates to cases of the description to which the reference relates, as the Court may determine to be reasonable in the circumstances.

**Further
reference to
Court**

87. (1) Where the Court has on a previous reference of a licensing scheme under section 85 or 86, or under this section, made an order with respect to the scheme then, while the order remains in force

- (a) the licensing body;
- (b) a person claiming that he requires a licence in a case of the description to which the order applies; or
- (c) an organisation claiming to be representative of such person,

may refer the scheme again to the Court so as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Court be referred to again in respect of the same description of cases

- (a) within twelve months from the date of the order on the previous reference; or
- (b) if the order was made so as to be in force for fifteen months or less, until the last three months before the expiry of the order.

(3) A scheme which has been referred to the Court under this section shall remain in operation until proceedings on the

reference are concluded.

(4) The Court shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far only as it relates to cases of the description to which the reference relates, as the Court may determine to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Court may determine.

Application for grant of licence in connection with licensing scheme

88. (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Court for redress.

(2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either

- (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that it should not be granted; or
- (b) proposes terms for a licence which are unreasonable,

may apply to the Court.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of subsection (2) if

- (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or
- (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Court is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a scheme on such terms as the Court may determine to be applicable in accordance with the scheme or, as the case may be to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Court may determine.

Application for review as to entitlement to licence

89. (1) Where the Court has made an order under section 86 that a person is entitled to a licence under a licensing scheme, the licensing body or the original applicant may apply to the Court to review its order.

(2) An application shall not be made, except with the special leave of the Court

(a) within twelve months from the date of the order or of the decision on a previous application under this section; or

(b) if the order was made so as to be in force for fifteen months or less, or, as a result of the decision on a previous application under this section is due to expire within fifteen months of that decision, until the last three months before the expiry date.

(3) The Court shall on an application for review confirm or vary its order as it may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

Effect of order of Court as to licensing scheme

90. (1) A licensing scheme which has been confirmed or varied by the Court under section 85 or 86 shall be in force, or as the case may be, remain in operation so far as it relates to the description of the case in respect of which the order is made, so long as the order remains in force.

(2) While the order is in force a person who in a case of a class to which the order applies,

(a) pays to the licensing body any charges payable under the scheme in respect of a licence covering the case in question or, if

the amount cannot be ascertained, gives an undertaking to the licensing body to pay them when ascertained; and

- (b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

(3) The Court may direct that the order, so far as it varies the amount of charges payable, shall have effect from a date before that on which it is made, not being a date earlier than the date on which the reference was made or, where the scheme came into operation but no such direction shall be made where subsection (1) applies.

(4) If a direction is made under subsection (3);

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and
- (b) the reference in subsection (2) (a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

(5) Where the Court has made an order under section 88 and the order remains in force, the person in whose favour the order is made shall, if he

- (a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained; and
- (b) complies with the other terms specified in the order,

be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

*References And Application With Respect To Individual
Licensing By Licensing Bodies*

**Licences to
which sections
91 to 95 apply**

91. Sections 91 to 95 apply to the following descriptions of licence granted by a licensing body otherwise than in pursuance of a licensing scheme:

- (a) licences relating to the copyright in literary, dramatic, musical or artistic works or films or film sound-tracks when accompanying a film, which cover works of more than one author, so far as they authorise
 - (i) copying the works;
 - (ii) performing, playing or showing the work in public; or
 - (iii) broadcasting the works or including it in a cable programme service;
- (b) any licence relating to the copyright in a sound recording other than a film sound-track when accompanying a film, broadcast or cable programme, or the typographical arrangement of a published edition; and
- (c) any licence relating to the copyright in sound recordings, film or computer programme so far as they relate to the rental of copies to the public

and for the purpose of these sections “a licence” means a licence of any of those descriptions.

**Reference to
Court of
proposed
licence**

92. (1) The terms on which a licensing body proposes to grant a licence may be referred to the Court by the prospective licensee.

(2) The Court shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Court decides to hear the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Court may determine.

**Reference to
Court of**

93. (1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body

expiring licence by effluxion of time or as a result of notice given by the licensing body, may apply to the Court on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such an application may not be made until three months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Court shall remain in operation until proceedings on the reference are concluded.

(4) If the Court finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Court may determine to be reasonable in the circumstances.

(5) An order of the Court under this section may be made so as to be in force indefinitely or for such period as the Court may determine.

Application for review of order as to licence

94. (1) Where the Court has made an order under section 92 or 93, the licensing body or the person entitled to the benefit of the order may apply to the Court to review its order.

(2) An application shall not be made, except with the special leave of the Court

(a) within twelve months from the date of the order or of the decision on previous application under this section; or

(b) if the order was made so as to be in force for fifteen months or less, or as a result of the decision on a previous application under this section is due to expire within fifteen months to that decision, until the last three months before the expiry date.

(3) The Court shall on an application for review confirm or vary its order as the Court may determine to be reasonable in the circumstances.

Effect of order of Court as to licence

95. (1) Where the Court has made an order under section 92 or 93 and the order remains in force, the person entitled to the benefit of the order shall, if he

(a) pays to the licensing body any charges

payable in accordance with the order or if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained; and

- (b) complies with the other terms specified in the order,

be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

- (2) The benefit of the order may be assigned

- (a) in the case of an order under section 92, if assignment is not prohibited under the terms of the Court's order; and

- (b) in the case of an order under section 93, if assignment was not prohibited under the terms of the original licence.

(3) The Court may direct that an order under section 92 or 93, or an order under section 94 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

- (4) If such a direction is made,

- (a) any necessary repayments or further payments, shall be made in respect of charges already paid; and

- (b) the reference in subsection (1) (a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

Factors to be taken into account in certain classes of case

**General
consideration**

96. In determining what is reasonable on a reference or application under this Part relating to a licensing scheme or licence the

**unreasonable
discrimination**

application under this Part relating to a licensing scheme or licence, the Court shall have regard to

- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances; and
- (b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licences, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

**Licences for
reprographic
copying**

97. Where a reference or application is made to the Court under this Part relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, the Court shall have regard to

- (a) the extent to which published editions of the works in question are otherwise available;
- (b) the proportion of the work to be copied; and
- (c) the nature of the use to which the copies are likely to be put.

**Licences for
educational
establishments
in respect of
works included
in broadcasts
or cable
programmes**

98. (1) This section applies to references or applications under this Part relating to licences for the recording by or on behalf of educational establishments of broadcasts or cable programmes which include copyright works, or the making of copies of such recordings, for educational purposes.

(2) Where an application is made to the Court under section 97, the Court shall, in considering what charges if any, should be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

**Licences to
reflect
conditions
imposed by**

99. (1) This section applies to references or applications under this Part in respect of licences relating to sound recordings, films, broadcasts or cable programmes which include, or are to include, any

**promoters
events**

entertainment or other event.

(2) The Court shall have regard to any conditions imposed by the promoters of the entertainment of other event; and, in particular, the Court shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

(3) Nothing in this section shall require the Court to have regard to any such conditions in so far as they

- (a) purport to regulate the charges to be imposed in respect of the grant of licences; or
- (b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film, broadcast or cable programme.

**Licences to
reflect
payments in
respect of
underlying
rights**

100. (1) In considering what charges should be paid for a licence on a reference or application under this Part relating to licences for the rental to the public of copies of sound recordings, films, or computer programmes, the Court shall take into account any reasonable payments which the owner of the copyright in the sound recording, film or computer program is liable to make in consequence of granting of the licence, or of the acts authorised by the licence, to owners of copyright in works included in that work.

(2) On any reference or application under this Part relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes, the Court shall take into account, in considering what charges should be paid for a licence, any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance included in the recording, film, broadcast or cable programme.

**Mention of the
specific matters
not to exclude
relevant
considerations**

101. The mention in sections 96 to 99 of the specific matters to which the Court is to have regard in certain classes of cases does not affect the Court's general obligation in any case to have regard to all relevant considerations.

PART IX – RIGHTS IN PERFORMANCES

Protection and conferment of rights in performances

102. (1) The provisions of this Act on the protection of performers shall apply to

- (a) performers who are nationals of Saint Vincent and the Grenadines; and
- (b) performers who are not nationals of Saint Vincent and the Grenadines but whose performances
 - (i) take place on the territory of Saint Vincent and the Grenadines; or
 - (ii) are incorporated in sound recordings that are protected under this Act.

(2) The provisions in this Act shall also apply to performers who are eligible for protection by virtue of and in accordance with international conventions or other international agreements to which Saint Vincent and the Grenadines is a party.

(3) By virtue of, and subject to the provisions of this Part, rights are conferred on

- (a) a performer, requiring his consent to the exploitation of his performance; and
- (b) a person having recording rights in relation to a performance, in respect of recordings made without his consent or that of the performer.

(4) The rights conferred by this Part are independent of

- (a) any copyright in, or moral rights relating to, any work used or performed in the performance; and
- (b) any other right or obligation arising

otherwise than under this Part.

(5) The rights conferred by this Part apply in relation to performances taking place before the commencement of this Part, but no act done before commencement, or in pursuance of arrangements made before commencement, shall be regarded as infringing those rights.

Performer's Rights

**Consent
required for
recording or
live
transmission of
performance**

103. (1) A performer's rights are infringed by a person who, without the performer's consent

- (a) makes, otherwise than for his private and domestic use, a recording of whole or any substantial part of a qualifying performance; or
- (b) broadcasts live, or includes live in a cable programme service a recording of, the whole or any substantial part of a qualifying performance.
- (c) infringes his right of distribution or right of making available to the public a fixed performance by wire or wireless means.

(2) In an action for infringement of a performer's rights brought by virtue of this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

**Consent and
royalty
required for
adaptation of
recording**

104. (1) A performer's rights are infringed by a person who, without his consent and payment of royalty at the rate, uses an original recording of a qualifying performance, whether authorised or not, for the purpose of making an adaptation of the recording.

(2) For the purposes of subsection (1) "an adaptation of the recording" means a recording in which the performance is accompanied by lyrics or music not contained in the original recording.

**Infringement of
performer's**

105. (1) A performer's rights are infringed by a person who, without his consent

**rights by
importing
possessory,
illicit recording**

who, without his consent

- (a) imports into Saint Vincent and the Grenadines otherwise than for his private and domestic use; or
- (b) in the course of a business, possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes,

a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement of a performer's rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy in damages available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) For the purposes of subsection (2) "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

**Performers
moral rights**

106 (1) A performer shall have as regards his live oral performances and performances fixed on a phonogram

- (a) the right to claim to be identified as the performer of a performance, except where omission is dictated by the manner of the use of the performance; and
- (b) to object to any distribution, mutilation or other modification of his performance that would be prejudicial to his reputation.

(2) The provisions of sections 17 (1) and 18 shall apply *mutatis mutandis*.

Rights of Person Having Recording Rights

**Consent
required of
performance
subject to
exclusive
contract**

107. (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or that of the performer, makes a recording of the whole or any substantial part of the performance, otherwise than for his private and domestic use.

(2) In an action for infringement of those rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

Infringement of recording rights by use of recording made without consent

108. (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer

- (a) shows or plays in public the whole or any substantial part of the performance; or
- (b) broadcasts or includes in a cable programme service the whole or any substantial part of the performance by means of a recording which was, and

which that person knows or has reason to believe was, made without the appropriate consent.

(2) Reference in subsection (1) to “the appropriate consent” is to the consent of

- (a) the performer; or
- (b) the person who at the time the consent was given had recording rights in relation to the performance or, if there was more than one such person, of all of them.

Infringement of recording rights by importing, possessing illicit recording

109. (1) A person infringes the rights of a person having recording rights in relation to a performance, who, without his consent or, in the case of a qualifying performance, without the consent of the performer,

- (a) imports into Saint Vincent and the Grenadines otherwise than for his private and domestic use; or
- (b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire or distributes,

a recording of the performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement of those rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is an amount not exceeding a reasonable payment in respect of the act complained of.

(3) For the purposes of subsection (2) “innocently acquired” means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

Exceptions to Infringement

Fair dealing for criticism, etc.

110. Fair dealing with a performance or recording;

- (a) for the purpose of criticism or review of that or another performance or recording, or of a work; or
- (b) for the purpose of reporting current events,

does not infringe any of the rights conferred by this Part, and the provisions of section 57 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

Acts done to recording of performance for purposes of instruction

111. (1) The rights conferred by this Part are not infringed by the copying of a recording of a performance in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.

(2) The rights conferred by this Part are not infringed

- (a) by the copying of a recording of a performance for the purpose of setting or answering questions in an examination;
- (b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

(3) Where a recording which would otherwise be an illicit recording is made in accordance with this section but is subsequently dealt with, it shall be treated as an illicit recording for the purpose of that dealing.

(4) For the purposes of subsection (3) and section 112 (2) “dealt with” means sold or let for hire, or offered or exposed for sale or hire.

Recording of broadcasting and cable programmes by educational establishment

112. (1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational institution for the educational purposes of that establishment without thereby infringing any of the rights conferred by this Part in relation to any performance or recording included in it.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this section but is subsequently dealt with under section 111 (4) it shall be treated as an illicit recording for the purposes of that dealing.

Acts done to performance or recording for Parliamentary proceedings

113. The rights conferred by this Part are not infringed by anything done for the purpose of

- (a) parliamentary or judicial proceedings or the reporting of those proceedings; or
- (b) the proceedings of a statutory inquiry or the reporting of those proceedings held in public.

Transfer of recording of performance in electronic form

114. (1) Where a recording of a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allows the purchaser to make further recordings in connection with his use of the recording, then, in the absence of any express terms

- (a) prohibiting the transfer of the recording by the purchaser;
- (b) imposing obligations which continue after a transfer;
- (c) prohibiting the assignment of any consent;
- (d) terminating any consent on a transfer; or
- (e) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by this Part, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.

(2) Subsection (1) applies where the original purchased recording is no longer usable and what is transferred is a further copy used in its place.

(3) This section does not apply in relation to a recording purchased before the commencement of this Act.

**Use of for
recordings of
spoken words**

115. (1) Where a recording of the reading or recitation of a literary work is made for the purpose of

- (a) reporting current events; or
- (b) broadcasting or including in a cable programme service the whole or part of the reading or recitation,

it is not an infringement of the rights conferred by this Part to use the recording, or to copy the recording and use the copy for that purpose, provided the conditions specified in subsection (2) are met.

(2) The conditions referred to in subsection (1) are that

- (a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme;
- (b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;
- (c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and
- (d) the use is by or with the authority of a person who is lawfully in possession of the recording.

Playing sound recording for charitable purposes

116. (1) It is not an infringement of any right conferred by this Part to play a sound recording as part of the activities of, or for the benefit of a club, society or other organisation if

- (a) the organisation is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and
- (b) the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation.

Incidental recording for purposes of broadcast or cable programme

117. (1) Subject to subsection (2), a person who proposes to broadcast a recording of a performance, or to include a recording of a performance in a cable programme service, in circumstances not infringing the rights conferred by this Part, shall be treated as having consent for the purposes of this Part for the making of a further recording for the purposes of the broadcast or cable programme.

(2) The consent given under subsection (1) is subject to the condition that

- (a) the further recording shall not be used for any other purposes; and
- (b) such recording shall be destroyed within twenty-eight days of being first used for broadcasting the performance or including it in a cable programme service.

(3) A recording made in accordance with this paragraph shall be treated as an illicit recording

- (a) for the purposes of any use in breach of the condition mentioned in paragraph (a) of subsection (2); and
- (b) for all purposes after that condition or the condition mentioned in paragraph (a) of subsection (2) is breached.

Recordings for supervision and control of programmes permitted

118. The rights conferred by this Part are not infringed by the making or use by a prescribed broadcasting organisation for the purpose of maintaining supervision and control over programmes broadcast by that organisation, of recordings of those programmes.

Order excepting acts from infringing rights under this Part

119. (1) Subject to the provisions of this section, the Minister may, by order, provide that the rights conferred by this Part are not infringed by the doing of such acts in relation to the performance as are specified in the order, where such acts are done in the circumstances so specified.

(2) An order made under subsection (1) may

(a) contain consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for

the purpose of giving due effect to the order;

(b) prescribe the amount, or the formula by which the amount shall be calculated, which shall be paid by way of equitable remuneration to the performer or other person whose rights under this Part are affected by the order.

(3) No order may be made under this section unless the Minister is satisfied

(a) that the acts specified are to be done in connection with an event of national importance, and

(b) that the effect of the order would not contravene any convention relating to rights in respect of performances to which Saint Vincent and the Grenadines is a party.

Court may consent on behalf of performer

120. (1) Subject to the provisions of this section, the Court may, on the application of a person who wishes to make a recording from a previous recording of a performance, give consent in a case where

- (a) the identity or whereabouts of a performer cannot be ascertained by reasonable inquiry; or
- (b) a performer unreasonably withholds his consent.

(2) Consent given by the Court has effect as consent of the performer for the purpose of

- (a) the provisions of this Part relating to performers' rights; and
- (b) paragraph (a) of subsection (3) of section 127,

and may be given subject to such conditions as the Court may specify in the order.

(3) The Court shall not give consent under paragraph (a) of subsection (1) except after the service or publication of such notices as may be required by regulations or as the Court may in any particular case direct.

(4) The Court shall not give consent under paragraph (b) of subsection (1) unless it is satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interest of his, but it shall be for the performer to show what his reasons are for with-holding consent, and in default of evidence as to his reasons the Court may draw such inferences as it thinks fit.

(5) In any case the Court shall take into account the following factors

- (a) whether the original recording was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further recording;
- (b) whether the making of the further recording is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original recording was made.

(6) Where the Court gives consent under this section it shall, in default of agreement between the applicant and the performer, make such order as it thinks fit as to the payment to be made to the performer in consideration of consent being given.

Duration and Transmission of Rights in Performances; Consent

Duration of rights in performances

121. The rights conferred by this Part shall continue to subsist until the expiry of seventy five years from the end of the calendar year in which the performance takes place.

Transmission of rights in performances

122. (1) The rights conferred by this Part are not assignable or transmissible, except to the extent that performers' rights are transmissible as provided in this section.

(2) On the death of a person entitled to performer's rights,

(a) the rights pass to such person as he may by testamentary disposition specifically direct; and

(b) if there is no such direction, the rights are exercisable by his personal representative, and references in this Part to the performer, in the context of the person having performer's rights, shall be construed as references to the person for the time being entitled to exercise those rights.

(3) Where by virtue of paragraph (a) of subsection (2) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.

(4) Subsections (1), (2) and (3) are without prejudice to any rights conferred by this Act on a person to whom the benefit of a contract or licence is assigned.

(5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his

death.

Consent

123. (1) Consent for the purposes of this Part may be given in relation to a specific performance, a specified description of performances, or performances generally, and may relate to past or future performances.

(2) A person having recording rights in a performance is bound by any prior consent given by a person through whom he derives his rights under the exclusive recording contract or licence in question, in the same way as if the consent had been given by him.

(3) Where a right conferred by this Part passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by him.

*Remedies for Infringement of Rights
in Performances*

**Infringement
actionable as
breach of
statutory duty**

124. An infringement of any of the rights conferred by this Part is actionable by the person entitled to the right as a breach of statutory duty.

**Order for
delivery up of
illicit recording
in
Court**

125. (1) Where a person has in his possession, custody or control in the course of a business an illicit recording of a performance, a person having performer's rights or recording rights under this Part in relation to the performance may apply to the Court for an order that the recording be delivered up to him or to such other person as the Court may direct.

(2) An application shall not be made after the end of the period specified in section 135, and no order shall be made unless the Court also makes, or it appears to the Court that there are grounds for making, an order under section 134.

(3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 135 is not made, retain it pending the making of an order, or the decision not to make an order under that section.

(4) Nothing in this section affects any other power of the Court.

**Right to seize
illicit**

126. (1) Subject to any decision of the Court under section 134 and the conditions specified in subsections (2) (3) and (4) an illicit

recordings

134 and the conditions specified in subsections (2), (3) and (4), an illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire and in respect of which a person would be entitled to apply for an order under section 134 may be seized and detained by him or a person authorised by him.

(2) Before anything is seized under this section written notice of the time and place of the proposed seizure must be given to a local police station.

(3) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

(4) For the purposes of this section “premises” includes land, buildings, fixed or moveable structures, vehicles, vessels and aircraft.

Offences In Relation to Performances

Criminal liability for making illicit recordings

127. (1) A person who without sufficient consent
- (a) makes for sale or hire;
 - (b) imports into Saint Vincent and the Grenadines otherwise than for his private and domestic use;
 - (c) possesses in the course of a business with a view to doing any act infringing the rights conferred by this Part; or
 - (d) in the course of a business,
 - (i) sells or lets for hire; or
 - (ii) offers or exposes for sale or hire; or
 - (iii) distributes,

a recording which is, and which he knows or has reason to believe is, an illicit recording, commits an offence.

(2) A person who causes a recording of a performance made without sufficient consent

- (a) to be shown or played in public; or
- (b) to be broadcast or included in a cable programme service,

thereby infringing any of the rights conferred by this Part, if he knows or ought to have known that those rights are thereby infringed, commits an offence.

(3) For the purposes of subsections (1) and (2) “sufficient consent” means

- (a) in the case of a qualifying performance, the consent of the performer; and
- (b) in the case of a non-qualifying performance subject to an exclusive recording contract
 - (i) for the purpose of paragraph (a) of subsection (1), the consent of the performer or the person having recording rights; and
 - (ii) for the purposes of paragraphs (a) and (b) of subsection (2), the consent of the person having recording rights.

(4) References in this section to “the person having recording rights” are to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them.

(5) No offence is committed under subsection (1) or (2) by the doing of an act which, by virtue of any provision of this Part, may be done without infringing the rights conferred by this Part.

(6) A person guilty of an offence under subsection (1) or (2) shall be liable

- (a) on summary conviction to a fine not exceeding two thousand five hundred dollars or to imprisonment for a term not exceeding twelve months; or
- (b) on conviction on indictment to a fine not exceeding fifty thousand dollars or for a term not exceeding five years, or to both fine and imprisonment.

(7) A person guilty of any other offence under this section is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months or to both fine and imprisonment.

**Order for
delivery up of
illicit recording
in criminal
proceedings**

128. (1) The Court before which proceedings are brought against a person for an offence under section 127 may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control in the course of a business an illicit recording of a performance, order that it be delivered up to a person having performer's rights or recording rights in relation to the performance or to such other person as the Court may direct.

(2) An order may be made by the Court of its own motion or on the application of the prosecution and may be made whether or not the person is convicted of the offence, but shall not be made

- (a) after the end of the period specified in section 135; or
- (b) if it appears to the Court unlikely that any order will be made under section 134.

(3) An appeal lies to the Court of Appeal from an order made under this section.

(4) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 135.

PART X – COLLECTIVE SOCIETIES

Collective societies to be registered

129. (1) No person or association of persons shall, after the coming into force of this Act, commence or carry on the business of issuing or granting licences in respect of any work in which copyright or related rights subsists or in respect of any other rights conferred by this Act except in accordance with the registration granted under subsection (3).

(2) Notwithstanding subsection (1)

(a) an owner of copyright of related rights shall in his individual capacity, venture to have the right to grant licences in respect of his works consistent with his obligation as a member of a collective society; and

(b) a collective society functioning immediately before the coming into force of this Act shall be deemed to be a collective society for the purposes of this Act and every such society shall ensure that it is registered within a period of one year from the date of commencement of this Act.

(3) Any association of persons who fulfill the conditions as may be prescribed may apply for permission to do the business specified in subsection (1) to the Registrar.

(4) The Registrar may, having regard to the interests of authors and other owners of rights under this Act, the interest and convenience of the public and ability and professional competence of the applicants, register such association of persons as a collective society subject to such conditions as may be prescribed.

(5) The Registrar shall not ordinarily register more than one Collective Society to do business in respect of the same class of works.

(6) The Registrar may, if he is satisfied that a collective society is being managed in a manner detrimental to the interest of the owners of rights concerned, cancel the registration of the society after such inquiry as may be prescribed.

(7) If the Registrar is of the opinion that in the interest of the owners of rights concerned, it is necessary so to do, he may, by

order, suspend the registration of a society pending inquiry for a period not exceeding one year as may be specified in the order and the Registrar shall appoint an administrator to discharge the functions of the collective society.

(8) In the exercise of his functions under this section the Registrar shall act after consultation with the Minister.

**Administration
of rights by
collective
society**

130. (1) Subject to such conditions as may be prescribed

- (a) a collective society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and
- (b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the collective society under any contract.

(2) A collective society shall be competent

- (a) to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act;
- (b) to entrust to such foreign society or organisation the administration in any country of rights administered by the said collective society in Saint Vincent and the Grenadines; and
- (c) for administering in Saint Vincent and the Grenadines the rights administered in a foreign country by such society or organisation.

(3) Subject to such conditions as may be prescribed, a copyright society may

- (a) issue licences in respect of any rights under this Act;
- (b) collect fees in pursuance of such licences;

- (c) distribute such fees among owners of rights after making deductions for its own expenses;
- (d) perform any functions consistent with its rules and bye-laws.

Control over the copyright society by the owner of rights

131. (1) A collective society shall be subject to the control of the owners of rights whose rights it administers, not being owners of rights administered by a foreign society or organisation, and shall, in such manner as may be prescribed

- (a) prepare a scheme for determining the quantum of remuneration payable to individual owners of rights;
- (b) obtain the approval of such owners of rights for its procedures of collection and distribution of fees;
- (c) obtain the approval of such owners for the utilization of any amounts collected as fees for any purpose other than distribution to the owner of rights; and
- (d) provide such owners with regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

(2) All fees distributed among the owners of rights shall as far as may be, be distributed in proportion to the actual use of their works.

Submission of returns and reports

132. (1) A collective society shall submit to the Registrar such returns as may be prescribed.

(2) The Registrar may call for any report or records of a collective society for the purposes of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilized or distributed in accordance with the provision of this Act.

Rights and liabilities of performing

133. Nothing in this Part shall affect the rights or liabilities in any work in connection with a performing rights society which had accrued or were accrued on or before the day prior to the commencement

rights societies accrued or were accrued on or before the day prior to the commencement of this Act on any legal proceedings in respect of any such rights or liabilities pending on that day.

PART XI – GENERAL

Order for disposal of infringing copy or illicit recording

134. (1) An application may be made by the owner of a copyright to the Court for an order that

- (a) an order that an infringing copy or article delivered up in of pursuance of an order under section 30 and 46 shall be
 - (i) forfeited to the copyright owner; or
 - (i) destroyed or otherwise dealt with as the Court may direct;
- (b) an order that an illicit recording of a performance delivered up in pursuance of an order under section 125 or 128 shall be
 - (i) forfeited to such person having performer's rights or recording rights in relation to the performance as the Court may direct; or
 - (ii) destroyed or otherwise dealt with as the Court thinks fit;

or a decision that no order under paragraph (a) or (b) should be made.

(2) In considering what order should be made, the Court shall have consideration of the following:

- (a) where the infringement relates to copyright in a work, whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interest;
- (b) where the infringement relates to rights conferred under Part IX, whether other

remedies available in an action for infringement of those rights would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

(3) Provisions shall be made by order of Court with respect to the service of notice on persons having an interest in the copy or other articles or the illicit recording, as the case may be, and any such person shall be entitled

- (a) to appear in proceedings for an order under this section whether or not he was served with notice; and
- (b) to appeal against any order made, whether or not he appeared,

and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in an infringing copy other article, or recording, the Court shall make such order as it thinks just and may in particular, direct that such copy, article or recording be sold, or otherwise dealt with, and the proceeds divided.

(5) If the Court decides that no order should be made under this section, the person in whose possession, custody or control the copy, article or, recording was before being delivered up or seized is entitled to its return.

(6) References in this section to “a person having an interest in a copy or other article or a recording” include any person in whose favour an order could be made in respect of the copy, article or, as the case may be, a recording under this section.

Period after which delivery up not available

135. (1) An application for an order under section 30 or 125 may not be made after the end of the period of six years from the date on which the infringing copy or article or, the illicit recording in question was made, subject to the following provisions.

(2) If during the whole or any part of that period a person entitled to apply for an order

- (a) is under a disability; or
- (b) is prevented by fraud or concealment from discovering the facts entitling him to apply,

an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under a disability or, could with reasonable diligence have discovered those facts.

(3) An order made under section 30 or 126 shall not, in any case be made after the end of the period of six years from the date in which the infringing copy or article or, the illicit recording in question was made.

General civil remedies

136. (1) The Court shall have the authority

- (a) to order the impounding of copies of works or sound recordings suspected of being made or imported without the authorisation of the owner of any right protected under this Act when the making or importation of copies as subject to such authorisation as well as the impounding of the packaging of the implements that could be used for the making of such copies;
- (b) to order the forfeiture and seizure of air plates, moulds, matrices masters tapes, film negatives or other articles by means of which such copies of works or sound recordings may be reproduced, and all electronic, mechanical or other devices for manufacturing, reproducing or assembling such copies of works or sound recordings.

(2) The provisions of subsection (1) (a) shall not be applicable to copies and their packaging which were acquired by a third party in good faith.

(3) Where there is a danger that acts of infringement may be continued, the Court shall, in addition to any penalty imposed, impose a fine of five hundred dollars for each day on which the

infringement is continued.

Time limit for prosecution

137. No prosecution for an offence under this Act shall be commenced after the expiration of one year after the discovery of the offence.

Powers of members of Police Force

138. (1) Subject to section 139, a police officer not below the rank of an Sargeant may,

- (a) enter and search any premises or place;
- (b) stop, board and search any vessel other than a ship of war; or any aircraft other than a military aircraft; or
- (c) stop and search any vehicle

in which he reasonably suspects there is an infringing copy of a work or an illicit recording or any article used or intended to be used for making infringing copies or illicit recordings; and

- (d) seize, remove or detain
 - (i) any article which appears to him to be an infringing copy or an illicit recording or any other article which appears to him to be intended for use for making such copies or recordings; and
 - (iii) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Act.

(2) A police officer not below the rank of an Sargeant may

- (a) break open any outer or inner door of any place which he is authorised by this section to enter and search;
- (b) forcibly board any vessel, aircraft or vehicle which he is authorised under this Act to stop, board and search;

- (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act;
- (d) detain any person found in any place which he is authorised under this section to search until such place has been searched;
- (e) detain any vessel or aircraft which he is authorised under this section to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;
- (f) detain any vehicle which he is empowered under this Act to stop and search until it has been searched.

Restrictions on entry and search of premises

139. (1) Pursuant to section 138, no premises shall be entered and searched by a police officer unless a magistrate has issued a warrant under subsection (2).

(2) A Magistrate or Justice of the Peace may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any premises any article which may be seized, removed or detained under any provision of this Act, issue a warrant authorising a police officer not below the rank of Inspector to enter and search the premises, and such member may call upon any constable to assist him in entering and searching the premises.

(3) A police officer not below the rank of Sargeant authorised under subsection (2) to enter and search any premises may call upon any police officer to assist him in entering and searching the premises.

(4) Premises means any premises or a part thereof, used exclusively or mainly as a dwelling.

Obstruction of member of Police Force

140. (1) Without prejudice to any other written law, any person who

- (a) willfully obstructs a member of the Police Force in the exercise of his powers or the performance of his duties under this Act;

- (b) willfully fails to comply with any requirement properly made to him by any such member; or
- (c) without reasonable excuse fails to give such member any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Act,

commits an offence and is liable on summary conviction to a fine not exceeding two thousand five hundred dollars or to imprisonment for a term not exceeding twelve months.

(2) Nothing in this section shall be construed as requiring any person to give any information which may incriminate him.

**Offences by
body corporate**

141. Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be prosecuted against and punished accordingly.

**Power to make
regulations**

142. The Minister may make regulations prescribing such matters as are required or permitted by this Act to be prescribed or are necessary or desirable to be prescribed for giving effect to this Act.

**International
organisations**

143. (1) This section applies to international organisations as to which the Minister by order has declared that it is expedient that this section should apply.

(2) Where an original literary, dramatic, musical or artistic work is first published by or under the direction or control of an international organisation to which this section applies in any circumstance whereby copyright would not, except by virtue of this subsection, subsist in the work immediately after the first publication thereof, and

- (a) the work is so published in pursuance of an agreement with the author which does not reserve to the author the copyright, if any, in the work; or

(b) the work was made in circumstances that, if it had been first published in Saint Vincent and the Grenadines, the

organisation would have been entitled to the copyright in the work,

then, copyright shall subsist in the work by virtue of this section and the organisation shall be first owner of that copyright.

(3) Copyright of which an international organisation is first owner by virtue of this section shall subsist until the end of the period of fifty years from the end of the calendar year in which the work was made or such longer period as may be specified by the Minister, by order, for the purpose of complying with the international obligations of Saint Vincent and the Grenadines.

(4) An organisation to which this section applies which otherwise has not, or at some material time otherwise has not, the legal capacities of a body corporate shall have, and shall be deemed at all material times to have had, the enforcing copyright, and in connection with all legal proceedings relating to copyright.

**Act binds
Crown**

144. This Act binds the Crown save that nothing in this Act shall render the Crown liable to prosecution.

Regulations

145. The Minister may make regulations prescribing such matters as are required or permitted by this Act to be prescribed or as are necessary or desirable to be prescribed for giving effect to this Act.

**Repeal
Cap. 262**

146. The Copyright Act, is repealed.

Savings

147. Nothing in this Act shall affect the operation of any rule of equity relating to a breach of trust or confidence.

**Transitional
provisions**

148. (1) Where immediately prior to the appointed day copyright subsists in Saint Vincent and the Grenadines in any literary, dramatic, musical or artistic work by virtue of the Copyright Act, , such copyright shall continue to subsist, and the person entitled thereto by virtue of that Act shall be the owner thereof, under and subject to this Act, and in particular

(a) the duration of such copyright;

(b) the acts comprised within the exclusive

rights attaching to such copyright; and

- (c) the effect upon the ownership of such copyright of any event or transaction

occurring or of any contract or agreement made on or after the appointed day,

shall be governed by this Act.

(2) Where before the appointed day any person has incurred any expenditure or liability in connection with or in contemplation of the doing of an act in relation to a protected work or to a performance in respect to which rights are conferred by this Act, being an act which prior to that date would have been lawful, nothing in this Act shall diminish or prejudice any rights or interests which, in relation to that work or performance, are subsisting and valuable on the appointed day, unless the person who, by virtue of this Act, is the owner of the copyright or the person having rights in the performance, agrees to pay such compensation as, in default of agreement, may be fixed by the Court.

(3) Where an act done before the appointed day was then an infringement of copyright but is not an infringement of copyright or rights in a performance under this Act, then, proceedings in respect of that act may be taken as if this Act had not been passed.

(4) An act done before the appointed day shall not be an infringement of copyright or rights in a performance conferred by this Act if that act would not, but for the passing of this Act, have constituted an infringement.

(5) Proceedings under this Act for infringement may be taken notwithstanding the alleged infringement occurred before the appointed day.

(6) For the purposes of this section “appointed day” means the day appointed by the Governor-General pursuant to section 1.

Passed in the House of Assembly this 20th day of February 2003.

NICOLE HERBERT
Clerk of the House of Assembly (Ag.)